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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 452/88 & O.A. 432/88

Date of decision 21-10-1988

Shri V.D. Trivedi ..... Petitioner

Vs.

Union of India through .... Respondent(s)
Chairman, Central Board
of Direct Taxes.

Shri A.K.Sen, Senior Counsel with
Shri Ajay Kumar Jha and ...Counsel for the Petitioner
Shri P.N. Mishra.

Senior Counsel
Shri V.K. Kantha, with ....Counsel for the Respondents.
Shri Ravi P. Wadhwani

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN (J)

THE HON'BLE MR. S.D. PRASAD, 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

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

The applicant, who was working as Inspecting Assistant Commissioner of Income Tax in New Delhi in the year 1983-84, filed these applications under Section 19 of the Administrative Tribunals Act, 1985 against the Union of India represented by the Chairman, Central Board of Direct Taxes challenging the disciplinary proceedings initiated against him and his suspension in contemplation of such proceedings. In O.A. 452/88, the applicant has prayed that the impugned memorandum dated 5.2.1988, whereby it was proposed to hold an inquiry against him under C.C.S.(CCA) Rules, 1965 and Article I thereof (Annexure-I), be quashed. In

O.A. 432/88, he has prayed that the impugned order dated 15.10.87 whereby he was placed under suspension be quashed and that the period of suspension should be treated as period on regular duty. As our decision in O.A.452/88 will have a material bearing on the decision in O.A.432/88, it would be convenient to deal with both cases in a common judgment.

OA-432/88

2. We may first consider O.A.432/88. In this case, the applicant has challenged the validity of the impugned order dated 15.10.87 whereby the President, in exercise of the powers conferred by Sub-rule(1) of Rule 10 of the CCS(CCA) Rules, 1965 placed the applicant under suspension with immediate effect. Rule 10(1) provides that the appointing authority or any authority to which it is subordinate or any other authority empowered in that behalf by the President may place a Government Servant under suspension "where a disciplinary proceeding against him is contemplated or is pending". The Memorandum dated 5.2.88 proposing to initiate disciplinary proceedings against him under Rule 14 of the CCS(CCA) Rules, 1965 was served on him on 10.2.88 which has been impugned in O.A.452/88. The contention of the applicant is that the order of suspension is discriminatory as the applicant has been singled out for suspension while there are a number of officers against whom disciplinary proceedings have been contemplated but they have not been suspended. He has given names of twenty such officers in Annexure-II

to the application. In view of this, he has contended that the order of suspension violates Article 14 of the Constitution. The applicant has also alleged mala-fides on the part of the respondents. He has alleged that the respondents have placed him under suspension because the filing of another application in this Tribunal regarding his non-promotion has caused irritation and dis-comfort to them. According to him, the respondents want to terrorise him and denigrate him and his reputation in official and social circles.

3. The respondents in their counter affidavit have refuted the aforesaid allegations, including that of malafides. As regards the contention that some other officers against whom disciplinary proceedings have been contemplated but who have not been suspended, the respondents have stated that the decision to place the applicant under suspension was taken after a careful consideration of the material on record. It was not necessary that in all such cases wherein disciplinary proceedings are initiated, the officer concerned should be placed under suspension in as much as it depends on the facts of each case individually. In the case of the petitioner, the charges were of a serious nature and in the event of being established, might lead to removal/dismissal from service.

4. The applicamt has stated that the disciplinary proceedings pertain to the directions issued by him in certain cases as a quasi-judicial authority under

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Section 144 B of the Income Tax Act to his Income Tax Officer after affording proper opportunity to the assessee as required by law. In view of this, not only the suspension but even disciplinary proceedings were highly unjustified. The respondents have contended that the applicant did not judicially examine the issues involved and issued directions to the ITOs contrary to the facts of the cases concerned, and with a view to unduly favour the assessees concerned.

5. We have carefully considered the respective contentions of both the parties and have heard their learned counsels. The legal position in regard to suspension is well settled. In State of Orissa Vs. Shiva Parashad Das, 1985 SCC(L&S) 397 at 399, the question arose whether an order of suspension from service passed against a Government Servant falls within the scope and purview of Article 311 of the Constitution. The Supreme Court observed that "an order of suspension passed against a Government Servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within the Article 311 of the Constitution".

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The provisions of Article 311 have no application to a situation where a Government Servant has been merely placed under suspension pending departmental inquiry since such action does not constitute either dismissal or removal from service. As regards the contention of the applicant that some other officers have not been placed under suspension though disciplinary proceedings are contemplated against them, we are of the opinion that each case has to be considered on its own merits and that the provisions of Article 14 of the Constitution cannot be invoked. We also find that the allegation of malafides is vague and unsustainable.

6. In view of the above, there is no merit in the contention of the applicant challenging the impugned order dated 15.10.1987, whereby he was placed under suspension.

7. The question arises as to what relief the applicant is entitled to in OA-432/88. This would largely depend on our decision in OA-452/88, wherein he has challenged the validity of the impugned memorandum dated 5.2.1988 whereby it was proposed to hold an enquiry against him under CCS (CCA) Rules, 1965.

OA-452/88

8. The facts of OA-452/88 which are undisputed, are as follows. While working as Inspecting Assistant Commissioner of Income Tax at Delhi, during the period from 27.9.83 to 20.10.84, the applicant issued instructions under Section 144-B of the Income Tax Act, 1961 in seven cases relating to his Range. On 5.2.88, the impugned memorandum was issued by the President, whereby it was proposed to hold an inquiry against him under Rule 14 of the CCS(CCA) Rules, 1965. The statement of article of

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charge framed against him was as follows:-

> "Shri V.D. Trivedi, while functioning as IAC Range IV-A, Delhi during the period from 27.9.83 to 20.10.84 issued instructions under section 144-B in 7 cases indicated in Annexure-II & III in a dishonest and mala fide manner apparently with a view to favouring the assessees concerned. Apparently by his above acts, Shri V.D. Trivedi displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened the provisions of Rule 3(i)(i), 3(1)(ii) and 3(i)(iii) of the C.C.S.(Conduct) Rules, 1964."
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> (vide Annexure-I of the impugned memorandum)

The statement of imputations of misconduct or misbehaviour in support of the Article of charge framed against him was also served upon him along with the impugned memorandum (vide Annexure-II to the impugned memorandum). At this stage, the applicant filed the present application before us.

9. On 8.4.1988, this Tribunal passed an interim order directing that further disciplinary proceedings against the applicant may be stayed until further orders.

10. The contention of the applicant is that various Income Tax Officers working under him had submitted from time to time the Draft Assessment Orders seeking directions under Section 144-B of the Income Tax Act. After receipt of the Draft Assessment Orders, the applicant gave proper opportunity to the assessees to represent their cases, lead evidence and produce documents, etc. The concerned Income Tax Officer was also requested to be present during these hearings afforded to the assessee so that he could also hear the arguments of the assessee, look into the evidence produced and express his opinion. After judicially examining the cases, hearing the assessee, examining the records and evidence and considering the opinion of the Income Tax Officer about the evidence and documents produced during the proceedings under Section 144-B before the applicant, he

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issued directions under Section 144-B upholding some and deleting some additions/disallowances proposed in the Draft Assessment Orders in many cases. The directions as envisaged in Section 144-B were issued after judicially considering the merits of each case as also the various judicial pronouncements on the subject. The ITOs, who were usually present during the proceedings under Section 144-B before the applicant, were given opportunity to examine the evidence produced by the assessee during the proceedings under Section 144-B and to satisfy themselves in regard to the additions and allowances proposed in the Draft Assessment Order.

11. The applicant has contended that Section 144-B confers a quasi-judicial power on an Inspecting Assistant Commissioner. While exercising the power contemplated under the said Section, he has to consider the Draft Order of the I.T.O., objections from the assessee to the Draft Assessment Order and after going through the records relating to the draft order and hearing the assessee, issue in respect of the matters covered by the objections, such directions as he thinks fit. The statute does not confer on him an unguided or uncontrolled power so as to enable him to act arbitrarily or capriciously. He has to act only as per law and according to the merits of the case. This power is also subject to judicial review and the Income Tax Act gives wide power to the Commissioner of Income Tax under Section 263(1) to call for and examine the record of any proceeding under the Act and if he considers that any order passed therein by the Income Tax Officer, including under the directions issued under

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Section 144-B is erroneous insofar as it is prejudicial to the interest of revenue, he can cancel the assessment and direct a fresh assessment. The applicant has pointed out that in none of the cases referred to in the article of charge, the concerned Commissioner had chosen to exercise his power contemplated under Section 263 (1) of the Income Tax Act.

12. The applicant has also stated that while exercising power under Section 144-B, no specific procedure to be followed has been contemplated under the Act, nor is there any prohibition or limitation under the Act regarding calling for report from the I.T.O. concerned on the additional evidence adduced by the assessee in the proceedings under Section 144-B. The Inspecting Assistant Commissioner could consider the objections of the assessees independently or may take the assistance of the subordinates in order to ascertain the correctness of such objections and evidence and, thereafter, may take a decision on his own. A quasi-judicial authority, while exercising its statutory duty, can take the assistance of subordinates and thereafter, take a decision on its own after taking into consideration the reports of the subordinates and all other materials. The requirement of acting judicially means a requirement to act justly and fairly. In the instant case, it has been contended that the applicant acted in good faith in order to ensure a just and fair decision as required by law.

13. In view of the above, the applicant has contended that while discharging his official duties, no disciplinary proceedings can be initiated against him on surmises, suspicion and conjectures against the decisions taken by him as a quasi-judicial authority.

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14. The respondents have contended in their counter-affidavit that the directions issued by the applicant in the instant case were not issued after judicially examining the case. The directions to delete the additions and disallowances proposed in the Draft Assessment Order were made contrary to the facts of the case. The charge framed against him is based not only on the fact that he deleted the various additions proposed in the Draft Assessment Order but that while ordering deletion of various additions proposed by the I.T.O., he did not take into account the relevant facts and thereby unduly favoured the assessees concerned. It has been submitted that the applicant will have full opportunity during the proposed inquiry to prove that his action under Section 144-B of the Income Tax Act was not dishonest and mala fide.

15. As to the contention that the Commissioner did not pass orders under Section 263 setting aside the orders of assessment based on the instructions issued by the applicant, the respondents have contended that this did not mean that the instructions issued by him were proper. During the arguments, the learned counsel for the respondents stated that the Commissioner could not exercise his jurisdiction under Section 263 as the case had become barred by limitation.

16. According to the respondents, the allegation was that the applicant exercised his powers dishonestly and in an arbitrary manner. They have submitted that the Government has enough material to substantiate the charges levelled against him.

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17. The respondents have admitted in their counter-affidavit that there is no bar to calling for a further report from the I.T.O. on the assessee's submissions before issuing directions under Section 144-B. However, the charge framed against him is that by using the device of calling for further reports from the I.T.O., the applicant ordered deletion of the additions proposed by the ITOs earlier without taking into account the merits of the grounds on which additions had been proposed earlier. The manner of calling for reports from the ITOs on the additions proposed and purposedly accepting these for deleting the huge additions proposed by the ITOs supported by detailed and cogent reasons, indicated dishonest motive on the part of the applicant.

18. The respondents have denied that the applicant exercised these powers in good faith.

19. The respondents have also contended that the present application is premature inasmuch as the applicant will get full opportunity to defend his case in the proposed inquiry.

20. We have gone through the records of the case and heard the learned counsel for both the parties at length. During the arguments, we had requested the learned counsel for the respondents to let us have information about similar disciplinary proceedings which had been earlier initiated against erring departmental officials exercising quasi-judicial powers and the penalty imposed on them. The learned counsel has furnished copies of such proceedings conducted against some ITOs in the past.* The learned counsel for the respondents had also stated at the Bar that disciplinary proceedings had been initiated against S/Shri Rajpal and Gupta, the ITOs whose assistance was taken by the applicant/

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* 1) Minor penalty of withholding of two annual increments in the time-scale of pay was imposed on Shri M.A.Bhosale, ITO,Bombay vide orders dated 8.10.85; 2) Withholding of the entire monthly pension was imposed on Shri P.Singa Rao, ITO vide order dated 15.4.87; 3) Withholding of the entire monthly pension was imposed in Shri Jayaraman, ITO (Retired) vide order dated 6.7.1988; 4) Removal from service was imposed on Shri K.S. Agnihotri, ITO, Raichur, vide order dated 29.10.1985.

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exercising his powers under Section 144-B. The learned counsel stated that these proceedings are still pending.

21. The issues raised in the present application are of great importance. There are numerous enactments under which Government servants are vested with powers of a quasi-judicial nature. The question arises whether these authorities enjoy any immunity from legal proceedings, including departmental proceedings, in respect of matters decided by them in the performance of their quasi-judicial functions.

22. The very same issued raised in the present application had been considered in detail in the decision of the Supreme Court in S.Govinda Menon Vs. Union of India & Anr., AIR 1967 SC 1724. In that case, Shri Govinda Menon, a Member of Indian Administrative Service, while working as First Member of the Board of Revenue, Kerala State, was also holding the post of Commissioner of Hindu Religious & Charitable Endowments. On the basis of certain petitions containing allegations of misconduct against him in the discharge of his duties as Commissioner, the State Government instituted certain preliminary enquiries against him and also placed him under suspension under Rule 7 of the All India Services (Discipline & Appeal) Rules,1955. A copy of the charges, together with a statement of certain allegations, was served on him, who thereafter filed a written statement of defence. After perusing the written statement, the Government passed orders that his explanation was unacceptable and that the charges should be enquired into by an inquiry officer to be appointed for the purpose. An Inquiry Officer was also

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appointed. Shri Menon filed a writ petition before the Kerala High Court praying for grant of a writ of certiorari to quash the proceedings initiated against him and for a writ of mandamus calling upon the State Government to allow him to function as the First Member of the Board of Review. The Inquiry Officer submitted his finding holding Shri Menon guilty of charges 1-4 and 9. The Union of India, after consideration of the report, issued a show-cause notice to him. He, thereafter amended the writ petition and prayed for the issue of a writ of prohibition restraining the Union of India from proceeding further in pursuance of the show-cause notice and also for quashing the same. The High Court allowed the amendment of the application.

23. The main contention of Shri Menon was that the proceedings initiated against him were entirely without jurisdiction as no disciplinary proceedings could be taken against him for acts or omissions with regard to his work as Commissioner under the Madras Hindu Religious & Endowments Act, 1951 and that the orders made by him being of quasi-judicial character, can be impugned only in appropriate proceedings taken under that Act. The two learned Judges who heard that petition, held divergent views. Mathew J. rejected the objections raised by Shri Menon regarding want of jurisdiction and held that the respondents had the power to proceed with the enquiry into the charges. On the other hand, S. Velupillai J. took the view that quasi-judicial decisions became final and conclusive if they were not set aside or modified in the manner prescribed by the Statute, and if the decisions are not so challenged, their correctness or legality must be taken to be conclusive, and such quasi-judicial decisions cannot form the subject

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matter of chargee in disciplinary proceedings against Shri Menon. He, therefore, held that the Union of India had no jurisdiction to proceed with the enquiry in respect of those chargee pertaining to the exercise of quasi-judicial functions by Shri Menon. In view of this difference of opinion, the matter was placed before a third Judge, Govind Menon J., who agreed with the view taken by Shri Mathew J. and in the result, the writ petition of Shri Menon was dismissed.

24. Shri Menon filed a civil appeal before the Supreme Court which was dismissed after a detailed examination of the legal aspects. In coming to its conclusion, the Supreme Court had given the following reasons:-

(a) Under Rule 4 of the All India Services (Discipline & Appeal) Rules, 1955, the appropriate authority has power to take disciplinary proceedings against Shri Menon and if he could be removed from service by an order of the Central Govt. 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 to an act or omission of an officer when serving under the Government, and that serving under the Government means subject to the administrative control of the Government and that disciplinary proceedings should be on the basis of the relationship of master and servant. In exercising statutory powers, the Commissioner was not subject to the administrative control of the Government and disciplinary proceedings cannot, therefore,

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be instituted against him in respect of an act or omission committed by him in the course of his employment as Commissioner.

24A. The Supreme Court rejected the above contention. It was observed that Rule 4 does not say that the act or omission must have been committed in the discharge 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 Shri Menon in respect of his acts or omissions which cast reflection upon his reputation for integrity or good faith or devotion to duty as a member of the Service. At the time of the alleged misconduct, Shri Menon was employed as the First Member of the Board of Revenue and he was at the same time performing the duties of the Commissioner under the Act, in addition to his duties as the First Member of the Board of Revenue. In the opinion of the Supreme Court, 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. The following observations made by the Supreme Court are pertinent:-

> "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, 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 connections with the nature and condition of his service or

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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 relevant 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 (1886) 17 QBD 536 at 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 or 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~~ he discovers it afterwards in dismissing that servant."

(b) Shri Menon had contended that the Commissioner was exercising a quasi-judicial function in sanctioning the leases under the Madras Hindu Religious & Charitable Endowments Act, 1951 and his orders, therefore, cannot be questioned except in accordance with the provisions of that 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 questioned by the executive Government through disciplinary proceedings. The Madras Act of 1951 provided for an appeal against the order of the Commissioner granting sanction to a lease and it is open to any party

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aggrieved to file such an appeal and question the legality or correctness of the order of the Commissioner. The Government also had powers of revision under the Act to 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-examine the legality of the order of the Commissioner granting sanction to the leases.

25. The Supreme Court rejected the above contention. It was observed that the charge against Shri Menon is one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of Section 29 of the Madras Act of 1951 and the Rules made thereunder in sanctioning the leases. On behalf of the respondents, it was argued that the Commissioner was not discharging quasi-judicial functions in sanctioning leases under Section 29. However, the Supreme Court proceeded on the assumption that the Commissioner was performing quasi-judicial functions in granting those leases. Even upon that assumption, the Supreme Court was satisfied that the Government was entitled to institute disciplinary proceedings if there was <u>prima facie material for showing recklessness or misconduct on the part of appellant in the discharge of his official duty</u>. It is true that if the provisions of Section 29 of the Act or the Rules are disregarded, the order of the Commissioner is illegal and such an order could be questioned in appeal under Section 29(4) or in revision under Section 99 of the Act. But in the present proceedings,

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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 provisions of the Act and the Rules. It is the manner in which he discharged his functions that is brought out 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 his power and it was in regard to such misconduct that he is being proceeded against. It is manifest, therefore, that though the propriety and legality of the sanction to the lessee may be questioned in appeal and revision under the Act, the Government is not precluded from taking disciplinary action <u>if there is proof</u> 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."

26. It will be abundantly clear from the aforesaid judgement of the Supreme Court that the Government is competent to initiate disciplinary proceedings against a Government servant even in respect of the decisions taken by him in his quasi-judicial capacity under the

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relevant statute, provided that:-

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

(ii) there is prima facie material for showing recklessness or misconduct on his part in the discharge of his official duty; or

(iii) there is proof that he 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.

27. In view of the above, the contention of the applicant in the instant case or that under no circumstances can the respondents initiate disciplinary proceedings against a Government servant exercising quasi-judicial functions in the discharge of his functions under the relevant statute, is clearly untenable in law.

28. We may also refer to the recent judgement delivered by the Principal Bench of the Tribunal presided over by the Chairman on 14.4.1988 in Shri Virendra Prasad Vs. Union of India & Others. In this case, the petitioner who was Regional Provident Fund Commissioner, had filed a writ petition in the Calcutta High Court praying for a writ of mandamus, commanding the respondents to cancel, withdraw, revoke and/or forbear from giving any effect to the impugned order and memorandum both dated 20th

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February, 1986. The case stood transferred to this Tribunal under Section 29 (1) of the Administrative Tribunals Act, 1985. While the petitioner was working as Regional Provident Fund Commissioner, he was placed under suspension by an order dated 20.2.1986 under Rule 6 of the Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971. By another order of the same date, he was informed that the inquiry will be held in respect of the charges mentioned in the annexure thereto. The charges were the following:-

"That Shri V. Prasad functioned as Regional Provident Fund Commissioner at Bombay during the period 1978-79.

That one of the duties of the said Shri V. Prasad was to levy damages to the various firms/companies etc. for having defaulted in payment of Provident Fund contribution.

That the said Shri V. Prasad was authorised to recover damages not exceeding the amount of arrears. If the party failed to pay the damages so levied, action for initiation of recovery proceedings could be taken under the law.

That the said Shri V. Prasad ordered the reduction of damages ordered by him earlier on review being not based on proper and admissible grounds and prima facie was intended to confer the undue benefit on the defaulting parties listed below and corresponding loss to the Employees' Provident Fund Organisation.

Sl. No.	Name of the employer	Previous levy and date	Revised levy and date
1.	Mukesh Textiles, Colaba, Bombay	Rs.4,49,593.00 20.7.1978	Rs.1,08,784.30 2.7.1979
2.	Jolly Bros., P.M. Road, Bombay.	Rs. 53,381.85 17.5.1978	Rs. 28,182.10 17.8.1979
3.	Pentagon Engg. Madhu Mukund, 33, Sion, Bombay-22.	Rs. 72,061.80 26.7.1978	Rs. 36,504.40 18.4.1979
4.	Bombay Furnace, Stadium House, Nariman Road, Bombay-20.	Rs. 39,406.50 19.8.1978	Rs. 13,135.50 22.10.1979

That the said Shri V. Prasad while functioning as aforesaid committed gross misconduct and failed to maintain absolute integrity and devotion to duty and

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acted in a manner unbecoming of a servant of the Employees' Provident Fund Organisation and thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

29. Under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the petitioner as Regional Provident Fund Commissioner, was empowered to levy damages on defaulting employers. In exercise of that power, he levied damages on several employers, including the four named in the statement of imputation. In the case of those four employers, he had ordered reduction of levy of damages by way of review. In the charge-sheet, it was alleged that he ordered the reduction of damages ordered by him earlier "On review being not based on proper and admissible grounds and prima facie was intended to confer the undue benefits on the defaulting parties listed below and corresponding loss to the Employees' Provident Fund Organisation." It was also stated that the petitioner, while functioning as aforesaid, "committed gross misconduct and failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a servant of the Employees' Provident Fund Organisation and thereby contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964."

30. The question arose whether the reduction in the levy of damages under Section 14-B by way of review which automatically confers the benefit on the employer, can be termed as misconduct.

31. The Tribunal observed that the power vested in the Regional Provident Fund Commissioner was a quasi-judicial power and, therefore, any error committed by the authority in exercise of this power can be reviewed by it. In

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exercise of the quasi-judicial power, the competent authority may commit an error of law or fact or commit any irregularity. If, on account of the order passed, the employer benefits, from that fact alone, the officer cannot be accused of conferring undue favour on the defaulting employer. It was further observed as follows:-

> "Even if the Regional Provident Fund Commissioner has erroneously or illegally reduced damages levied and that results in some loss to the Employees' Provident Fund Organisation, that being the result of the exercise of a quasi-judicial function, it cannot per se be deemed as misconduct. That order may not be valid in law or may be liable to be set aside on judicial review but merely because it has benefited the employer, an allegation of misconduct cannot be levelled. Viewing such an order with suspicion and levelling a charge of misconduct would deter the authorities exercising quasi-judicial function from acting freely and independently in the light of the law and facts as understood by them. Any such action will hinder the exercise of the quasi-judicial functions with judicial independance to the best of their judgement."

32. The circumstances in which disciplinary proceedings can be taken have also been discussed in the judgement of the Tribunal. If an order is made with corrupt motive, disciplinary proceedings can be taken and not otherwise. The following observations contained in the judgement are relevant:-

> "Of course, irrespective of whether the order made is right or wrong in law, if it is made with corrupt motive, disciplinary proceedings can certainly be taken. In such a case, it is not the legality or illegality of the order but the corrupt motive which is the reason for that order that becomes the subject matter of disciplinary proceedings. Merely because an order on review results in a benefit to the review petitioner, it cannot be deemed to be an undue benefit and the officer passing the order exposed to disciplinary proceedings where no corrupt motive is even alleged."

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33. The Tribunal further observed that mere suspension cannot be made the basis of a disciplinary proceeding and that there should be a positive allegation of misconduct.

34. The Tribunal discussed the four cases where the damages levied were reviewed and reduced by the Regional Provident Fund Commissioner and observed that the orders made on review were not set aside by any competent authority and that they had become final and binding on the parties. As such, it was observed that any further inquiry into such charges cannot be continued. The Tribunal, accordingly, allowed the petition.

35. In arriving at its conclusion, the Tribunal was also influenced by the fact that the orders by way of review were made by the petitioner in 1979 while the charge-sheet against him was served after a lapse of 7 years in 1986. The petitioner was also allowed to retire on attaining the age of superannuation on 31.7.1986.

36. It may be pointed out that the decision of the Supreme Court in Govinda Menon's case was not cited in Virendra Prasad's case. Nor was it referred to and discussed in the judgement.

37. Shri A.K. Sen, Senior Advocate appearing on behalf of the applicant, contended that the applicant in the present case had exercised his quasi-judicial functions and that no disciplinary proceedings can be initiated against him for what he had done in the exercise of quasi-judicial functions. He referred to the various provisions of the Income Tax Act and in particular, to the provisions of Section 293 of the Act which provides

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that "No suit shall be brought in any civil court to set aside or modify any assessment order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act". According to him, in no circumstance can a quasi-judicial authority be proceeded against for misconduct and that the Income Tax Act itself provided adequate safeguards against wrong orders issued by the Income Tax authorities exercising quasi-judicial powers. Numerous judgements indicating that the functions of the Income Tax authorities are quasi-judicial functions, were also cited at the Bar* by the learned counsel for the applicant. The learned counsel for the respondent also did not dispute this legal position.

38. In this context, we may briefly refer to the provisions regarding tax assessment contained in the Income Tax Act, 1965.

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* 1. (1968) 67 I.T.R. 106 (Supreme Court) M.N. Ipoh V. Comm. of I.T.

2. (1963) 48 I.T.R. 34 (Supreme Court) M. Chokalingam V. Comm. of I. Tax.

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39. The I.T.O. is the initial assessment authority under the Income-tax Act, 1961. He exercises his functions in a quasi judicial capacity. He is, however, not completely independent of control from the superior officers in assessing the income of an individual. The Inspecting Assistant Commissioner is empowered to supervise and review the work of Income-tax Officers. He can advise the ITOs on particular points of fact and law and ask them to get his approval of the draft assessment orders. Appeal lies to the Appellate Assistant Commissioner and in some cases to Commissioner (Appeals) who are also quasi-judicial authorities. The Department has no right of appeal to Appellate Assistant Commissioner against the order passed by the ITO, but the Act authorises the Commissioner to revise any order of the ITO within a period of 2 years of the order which is prejudicial to the interests of revenue. Sections 263 and 264 deal with the revision powers of the Commissioner, who also exercises quasi-judicial functions. From the order of the Appellate Assistant Commissioner or the Commissioner (Appeals), as the case may be, or the order of revision of the Commissioner in cases he revises the order of ITO in the interest of revenue, an appeal lies to the Income Tax Appellate Tribunal. The decisions of the Tribunal which is a quasi-judicial body are final on question of fact. From the orders of the Tribunal, a reference can be made to the High Court on questions of law and also directly to the Supreme Court if the Tribunal is of the

opinion that on account of a conflict of opinions amongst the High Courts, a reference should be made to that Court.'

40. Thus, there are several quasi-judicial authorities entrusted with the powers of tax assessment. Does it mean that all these authorities enjoy immunity from departmental proceedings being initiated against them by virtue of the provisions of Section 293 of the Income Tax Act? Even in a case where the officer concerned commits an act or omission in the course of discharge of his duties so as to reflect on his reputation for his integrity or good faith or devotion to duty, will he be immune from disciplinary proceedings? Suppose there is prima facie material for doubting the integrity or conduct of such an authority or to indicate that he has failed to act honestly or in good faith, is the Government precluded from initiating disciplinary proceedings against the officer concerned? These issues deserve examination in some detail.

41. Shri A.K.Sen, the learned Counsel for the applicant contended that Section 293 of the Income Tax Act puts an embargo on the conduct of disciplinary proceedings against an officer in respect of an order made or decision taken by him in the exercise of quasi-judicial cunctions. To our mind, such a contention is not legally sustainable. We have already referred to the decision of the Supreme Court in Govinda Menon's case, xxxxxxxxxxxxxxxxxxxxxxxxxxx

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wherein the Supreme Court upheld the validity of the disciplinary proceedings initiated against an IAS Officer who had purportedly exercised certain funtions in his quasi-judicial capacity. We may also refer to the decision of the Supreme Court in Krishna Chandra Tandon Vs. Vs. U.O.I., 1974 SCC (L&S) 329, wherein the Supreme Court upheld the validity of disciplinary proceedings initiated against an Income Tax Officer. In that case, the ITO did not, however, raise the contention that no such proceeding would lie against him for acts done by him in the exercise of quasi-judicial functions.

42. In the case of Judicial Officers, the Judicial Officers' Protection Act, 1850 confers immunity from being sued in a Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty. Section 1 of the Judicial Officers' Protection Act, 1850 reads as follows:-

> " No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he is at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warra-nt or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same".

43. The Judges (Protection) Act, 1985 (Act 59 of 1985) was enacted

by Parlaiment for securing additional protection for Judges and others acting judicially. Section 2 of the Judges(Protection)Act, 1985 provides that " in this Act, 'Judge' means not only every person who is officially designated as a Judge, but also every person -

(a) who is empowered by law to give in any legal proceeding a definitive judgement or a judgment which, if not appealed against would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Clause (a).

44. Section 3 of the Judges(Protection)Act, 1985 provides as follows:-

"3(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Sub-Section(2), no Court shall entertain or continue any Civil or Criminal Proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in Sub-Section(1) shall debar or affect in any manner the power of the Central Govt. or the State Govt. or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of Civil, Criminal, or departmental proceeding, or otherwise) against any person who is or was a Judge".

45. Section 4 of the Judges (Protection)Act,1985 provides that "the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."

46. The combined effect of the Judicial Officers' (Protection) Act,1850 and the Judges (Protection) Act, 1985 is that a Judge or any person acting judicially cannot be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his quasi-judicial duties. There is, however, no bar to departmental proceedings being initiated against such a person in accordance with law.

47. In the case of the Judges of the Supreme Court and the High Courts, Article 124(4) of the Constitution lays down a special procedure for their removal from office on the ground of mis-behaviour or incapacity. This provision has not, however, been invoked in a single case since the adoption of the Constitution, which is an entirely different matter. The provision for proceeding against the Judges of the Supreme Court and the High Courts for misdemeanour, exists. In the case of Chairman, Vice Chairman or Members of the Central Administrative Tribunal, Section 9 of the Administrative Tribunals Act,1985 provides for a procedure for removal on the ground of proved misbehaviour or incapacity. In the case of members of subordinate judiciary, disciplinary control vests in the High Court concerned as provided for in Article 235 of the Constitution. The reported cases are not many in which disciplinary proceedings for misconduct had been initiated against members of the subordinate judiciary in the exercise of their judicial functions in accordance with the relevant rules. In this context, reference may be made to the decision of the Rajasthan High Court in Bhagwat Swaroop Vs. State of Rajasthanm 1978(1) SLR 835 at 841. In that

case, the petitioner, who was a member of the Rajasthan Administrative Service, was posted as Magistrate Ist Class. He issued a search warrant under Section 100 CrPC for production of a girl on a fixed date. He, however, took up the case for final hearing on a holiday before the date already fixed and deprived the parents of the girl an opportunity of hearing in the matter and setting the girl free. In the departmental proceeding initiated against him, under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, he was charged with lack of proper care and caution, impartiality and responsibility expected of a Magistrate in dealing with the aforesaid case and that he had abused the process of law by issuing a search warrant for the recovery of the girl from the custody of her parents without taking proper evidence and further that when the girl was produced before him, he held his Court behind closed doors on a holiday and handed over the girl to some person without proper examination of the lady and without considering the counter claims of her parents. The petitioner contended that he had exercised judicial discretion in issuing the search warrant. The Rajasthan High Court observed that the order of the Magistrate passed in the exercise of judicial discretion in such matters, if it was not in accordance with law,

or was improper or illegal or even if the procedure adopted by him was found to be defective, the same could have been set aside on revision by the Sessions Judge or the High Court. However, it was observed that disciplinary proceedings can be initiated against the petitioner for misconduct if he had acted malafide and upon insufficient material. The following observation made by the High Court are pertinent: -

> " But where a Magistrate, while exercising his Judicial discretion, acted upon insufficient material or if it is found that further evidence or substantial nature was necessary before a search warrant under Section 100 of the Code of Criminal Procedure could have been issued in a particular case, the same could not amount to misconduct and it could heardly be a matter for taking disciplinary action unless it is alleged and proved that the conduct of the Magistrate, while exercising his judicial discretion, was of a nature not befitting the dignity of his office or where he was actuated by malice and it is found that a particular order was the result of the malafide conduct on the part of the Magistrate."

48. In view of the above, the Rajasthan High Court upheld the validity of the disciplinary proceedings initiated against the Magistrate.

49. It would thus be abundantly clear 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 ~~the~~ any or general immunity (which is unknown to law) from any proceedings whatsoever. In the instant case, we are concerned with an Inspecting Assistant Commissioner who had taken certain decisions in respect of some assessments in exercise of powers conferred upon him

under 144(B) of the Income Tax Act. Section 144(B) reads as follows:-

"144-B(1) Notwithstanding anything contained in this Act, where in an assessment to be made under Sub-Section(3) of Section 143, the Income Tax Officer proposes to make(before the ist day of October, 1984), any variation in the income or loss returned which is prejudicial to the assessee and the amount of such variation exceeds the amount fixed by the Board under Sub-Section(6), the Income Tax Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this Section referred to as the draft order) to the assessee.

(2) On receipt of the draft order, the assessee may forward his objections, if any, to such variation to the Income Tax Officer within seven days of the receipt by him of the draft order or within such further period not exceeding fifteen days as the Income Tax Officer may allow on an application made to him in this behalf.

(3) If no objections are received within the period or the extended period aforesaid, or the assessee intimates to the Income Tax Officer the acceptance of the variation, the Income Tax Officer shall complete the assessment on the basis of the draft order.

(4) If any objections are received, the Income Tax Officer shall forward the draft order together with the objections to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner shall after considering the draft order and the objections and after going through(wherever necessary)the records relating to the draft order, issue in respect of the matters covered by the objections, such directions as he thinks fit for the guidance of the Income Tax Officer to enable him to complete the assessment.

Provided that no directions which are prejudicial to the assessee shall be issued under this sub - section before an opportunity is given to the assessee to be heard".

50. The question arises whether any prima facie case of misconduct has been made out by the respondents in the instant case. If such a case has been made out, this Tribunal ought not to stay the proceedings at the threshold of the proposed inquiry. If there is no prima facie case, the Tribunal would be justified in giving appropriate reliefs to the applicant.

51. The question whether there is any prima facie case for initiating departmental proceedings against the applicant has to be considered in the light of the pleadings before us. The material on record consists of the memorandum issued by the respondents to the applicant on 5.2.88 proposing the holding of an inquiry under Rule 14 of the CCS(CCA) Rules, 1965 together with its four Annexures.

52. Annexure-I which contains the statement of Article of charge framed against him reads as follows:-

> " Shri V.D. Trivedi, while functioning as IAC Range IV-A, Delhi during the period from 27.9.83 to 20.10.84 issued instructions under section 144-B in 7 cases indicated in Annexure-II & III in a dishonest and malafide manner apparently with a view to favouring the assessees concerned. Apparently by his above sets, Shri V.D. Trivedi displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government Servant and thereby, contravened the provisions of Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of the CCS (Conduct) Rules, 1964".

53. Annexure-II contains the statement of imputation of misconduct or misbehaviour in support of the Article of charge. This memorandum refers to 7 assessment cases in which directions were issued by the applicant to the ITOsin exercise of his powers under Section 144(B).

54. Annexure-III deals with a list of documents by which the articles of charge are proposed to be sustained. These consist of the Income Tax assessment records of the 7 cases and the files of the IAC relating to those cases.

55. Annexure-IV which deals with the list of witnesses by whom the Article of charge against the applicant is proposed to be sustained is blank and does not give any names of the witnesses.

56. In the Article of charge, it has been stated that the applicant while functioning as IAC during the relevant period issued instructions under Section 144(B) in 7 cases in a dishonest and malafide manner apparently with a view to favouring the assessees concerned. Apparently by these acts, it has been alleged that he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravening the provisions of Rule 3 of the CCS (Conduct) Rules,1964.

57. The learned Counsel for the respondents vehemently argued that we should not only read the statement of imputations of misconduct which is at Annexure-II of the memorandum dated 5th February,1988 but also read "between the lines" so as to draw inference of misconduct. Annexure-II runs into about 43 pages. The contention of the respondents is that an ITO had proposed certain additions and disallowances in the case of some assessees, but these were knocked out by another ITO while the first ITO was on leave. This was done at the behest of the applicant. The conclusion drawn in Annexure-II is that the relevant issues had not been properly dealt with and the exercise of referring the matter back to the ITO's and then accepting the report

by the applicant without giving any finding of his own was designed to favour the assessees at the expense of revenue.

58. On carefully going through the statements contained in Annexure-II, it may be difficult to hold one way or the other as to whether a prima facie case of misconduct has been made out against the applicant. The contention of the learned counsel for the respondents that we should read "between the lines" for the purpose of ascertaining the misconduct is wholly unacceptable. It is a specious but strange argument. He, however, pointed out that departmental proceedings have been initiated against Mr. B.R. Gupta and Mr. O.P. Rajpal, the two ITO's concerned separately. The facts of the cases of these two ITOs mentioned by the learned counsel for the respondents are not, however, before us.

59. There is, however, one aspect of the matter which, though not included in the pleadings or arguments advanced during the hearing of the case, needs to be considered at this stage. This relates to the question whether the delay involved in initiating the impugned proceedings can be said to vitiate the proceedings as such. There are decisions of some High Courts to the effect that initiation of disciplinary proceedings after a long delay would not be justified and on that ground, the Courts have held that the departmental proceedings should be deemed to have been dropped (vide decision of the Madhya Pradesh High Court in V.P. Gidroniya Vs. State of Madhya Pradesh, 1967(1) SLR 243 at 251; of the Madras High Court in E.S. Athithyaraman Vs. the Commissioner, Hindu Religious and Charitable Endowments, 1971(2) SLR 41; of the Madhya

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Pradesh High Court in Mohanbhai Dungarbhai Parmer Vs. Y.B. Zala & Others, 1980(1) SLR 324; of the Calcutta High Court in Subrata Chaki and Others Vs. State of West Bengal and Others, 1985(3) SLR 530 at 535 and 536; and of the Principal Bench of this Tribunal in Tarlochan Singh Vs. Union of India and Others, 1986(3) SLJ 376. We have not come across any authoritative decision or pronouncement of the Supreme Court on the subject. In the instant case, however, the act constituting the alleged misconduct relates to the period from 27.9.1983 to 20.10.1984. Before the charge-sheet was issued on 5.2.1988, it appears that a detailed memorandum had been served on the applicant and he was given opportunity to inspect the relevant records and to give his version (vide para.8 of the counter-affidavit of the respondents at page 67 of the paper-book). This was apparently done in the course of a preliminary inquiry before drawing up of the formal proceedings. The applicant has stated that he had submitted an interim reply to the aforesaid memorandum in July, 1987 (vide para.8 (ii) of the rejoinder to the counter-affid vit at p.76 of the paper-book). This implies that a full or detailed reply to the preliminary memorandum was not furnished by the applicant and the formal proceedings were drawn up in its absence. It must be said that there are no clear or definite averments in regard to the reasons which occasioned a gap of more than three years between the alleged acts and institution of formal proceedings. This has been due to the fact that the petitioner himself never chose to

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assail the disciplinary proceedings on the ground of any delay. Consequently, we have no material before us on which to conclude that there was any unreasonable or unjustifiable, much less culpable, delay on the part of the respondents in initiating the impugned proceedings. There is also no material to think that the conduct of the impugned proceedings at this stage will, in any way, prejudice the applicant, or deprive him of a reasonable opportunity to defend himself. In any case, it will be open to him to plead this point in the regular proceedings, should it cause any kind of disability or difficulty to him in the proceedings.

60. In the facts and circumstances of the case, we are of the opinion that in a case of this kind, the law should be allowed to take its course and the disciplinary authority must not be prevented from holding an inquiry in accordance with the procedure laid down in the relevant rules. Though the C.C.S.(CCA) Rules,1965 do not specifically lay down any definite time-limit within which the disciplinary proceedings must be initiated or concluded, there are departmental instructions under which such proceedings should be initiated and concluded expeditiously. These instructions are particularly stringent in cases of suspension of charged officers. We need not, therefore, emphasise the point that these instructions should, as far as possible, be adhered to in the instant case. In any event, we are of the opinion that the disciplinary proceedings which has been initiated rather belatedly in the instant case, must be proceeded with with utmost despatch and expedition

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and be concluded within a period of one year from the date of communication of this order, as the outer limit. This is, of course, on the assumption that the applicant will cooperate fully in the conduct of the proceedings.

61. Subject to the foregoing observations, we are of the opinion that sufficient grounds do not exist for our interfering with the impugned disciplinary proceedings at this stage. The application in OA-452/88 must, therefore, fail and is rejected accordingly. As regards the continuation of the suspension, which is the subject matter of OA-432/88, we do not see any justification to accept the applicant's prayer for the reasons already given in para.5 above. OA-432/88 must also fail and is hereby rejected. There will be no order as to costs in both cases. Let a copy of this order be placed in both the files, i.e., OA-452/88 and OA-432/88.

(S.D. Prasad)
Administrative Member

31/10/88
(P.K. Kartha)
Vice-Chairman(Judl.)