Reserved
On 17.12.2020

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00466/2020

Allahabad, this the **24th** day of **December**, 2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Subachan Ram Pr. Commissioner of Income Tax, Prayagraj, Aaykar Bhawan, I.T. Campus, 38, M.G. Marg, Civil Lines, Prayagraj-211001 (Uttar Pradesh).

Applicant

By Advocate: Shri Anil Kumar Srivastava

Vs.

1. The Union of India through Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.

2. The Chairperson, Central Board of Direct Taxes, Ministry of Finance, North Block, New Delhi – 110001.

3. The Director General of Income Tax (Vigilance) 2nd Floor, Jawahar Lal Nehru Stadium, Lodhi Road, New Delhi-110003.

4. The Additional Director General of Income Tax (Vigilance) (West), 4th Floor, Aaykar Bhawan, M.K. Road, Mumbai-400020.

5. The Additional Director of Income Tax (Vigilance) (West), 4th Floor, Aaykar Bhawan, M.K. Road, Mumbai-400020

Respondents

By Advocate: Shri Chakrapani Vatsyayan

O R D E R

Delivered by Hon'ble Mr. Devendra Chaudhry, Member (A)

The instant original application is made against the Memorandum/charge sheet F. No. C-29016/35/2020-Ad. VI-A dated 09.09.2020 issued by the Under Secretary to Government of India, received by the applicant on 10.09.2020 with prayer of not to proceed with the aforesaid impugned Memorandum/Charge Sheet considering proposed DPC for promotion of the applicant from the post of Principal

Commissioner of Income Tax to the post of Chief Commissioner of Income Tax.

2. The following relief is prayed for:

> (i) An Order be passed directing the respondents not to give effect to the impugned Memorandum/Charge Sheet dated 09.09.2020, issued by the Under Secretary to Government of India, received by the applicant on 10.09.2020 at 07:45 A.M. at his residence without annexures, a copy whereof is enclosed as Annexure A-1 to this Original Application;
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> (ii) An Order be passed directing the respondents not to proceed with the aforesaid impugned charge sheet dated 09.09.2020 issued by the Under Secretary to Government of India;
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> (iii) An Order be passed directing the respondents not to give effect to the impugned Memorandum/Charge Sheet dated 09.09.2020 issued by the Under Secretary to Government of India while considering the case of promotion of the applicant from the post of Principal Commissioner of Income Tax to the post of Chief Commissioner of Income Tax or not to withhold vigilance clearance or NOC for selection of as a member of Income Tax Settlement Commission;
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> (iv) An order be passed directing the respondent No. 3 and 4, not to withhold any vigilance clearance, and issue the clearance or no objection certificate (NOC) if sought by concerned authority, without being prejudiced of such untenable Memorandum/Charge Sheet dated 09.09.2020;
>
> (v) Any other, and further order may be passed, as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case;
>
> (vi) The cost of the present original application may also be awarded in favour of the Applicant as against the respondents as there is a genuine reason of hardship and loss of finance.

3. The brief facts of the case per the Applicant are that he is working on the post of Principal Commissioner of Income Tax and is presently posted at Prayagraj, Uttar Pradesh. That the impugned charge sheet dated has been got received by the respondent no. 3, on 10.09.2020 at 07.45 a.m. at his residence without annexures motivated with malafide reasons because the date of promotion from the post of Principal Commissioner of Income Tax to the post of Chief

Commissioner of Income Tax has been fixed as 10.09.2020, now postponed by the Departmental Promotion Committee.

3.1 That copy of letter F. No. Pr. CCIT/Lko/Gr. A/SR/2020/2655 dated 17.06.2020 received from the Principal Commissioner of Income Tax UP East was forwarded by the office of the Chief Commissioner of Income Tax Allahabad vide letter dated 18.06.2020, to the applicant, directing him to submit his explanation to the Directorate of Vigilance Memorandum of 15.06.2020 issued by the Additional Commissioner of Income Tax (Vigilance) unit-1, Mumbai on behalf of the Additional Director General of Income Tax (Vigilance), West Zone, CBDT, Mumbai in connection with Vigilance Inspection of his work as Commissioner Income Tax - CIT (A)-4 Mumbai, during the period from 01.01.2015 to 31.12.2017.

3.2 That the applicant submitted detailed explanation/version vide his letter dated 02.07.2020 on the issue of alleged delay in disposal of appeals as CIT (A)-4 Mumbai, stating inasmuch that appeals heard as CIT(A) cannot be practically carried out strictly within stipulated time on account of several unavoidable factors relating to procedural and administrative difficulties in field offices by the officers in performance of their quasi-judicial functions.

3.3 That the appellate orders pertaining to Article-I of the charge were delayed for procedural reasons beyond the practical control of the appellate officer and that notwithstanding, the instant appeals were passed in favour of the department after due careful examination. So there is no reason for the department to be aggrieved due to the said miniscule delays, more so, as neither the department nor anybody else filed any grievance concerning the matters decided close to five years

ago. Therefore, the allegations raised against the applicant are capricious and injusticiable and certainly not grave to be classified as acts of major misconduct and so the applicant has not acted in violation of Rule 3(1) (i), 3 (1) (ii), 3 (1) (iii) and 3 (1) (xxi) of the CCS (Conduct) Rules, 1964.

3.4 That in respect of Charge Article-II, the appellate order was passed without issue of notice to the appellant M/s Bakul Investment Pvt. Ltd. for A.Y. 2004-05, because a combined notice no. CIT (A)-4/IT-53 TO 59/ITO 2 (1)(1)/13-14 dated 29.06.2015 had already been issued and the date for hearing was accordingly fixed for 14.07.2015. That this notice was already issued and served by the office/predecessor and so there was no need to issue any additional notice as per provisions of Section 129 of the Income Tax Act, more so when there was no demand from the assessee side on reopening of the matter as provided for in the Section129 and the section permits continuance of proceedings from the earlier stage by the succeeding officer deciding the appeal. That the matter was delayed already due to the truant attitude of the appellant and hence the matter was decided by the applicant without further delay and excuse of uncalled for time-wasting notices.

3.5 That in similar circumstances, the Central Administrative Tribunal, Principal Bench, New Delhi finally disposed of an Original Application No. 201 of 2019 by passing an order dated 16.10.2019 and the case of the applicant is in better position than that of the above case, i.e. Original Application No. 201 of 2019 (Anuradha Mukherjee Versus Union of India and another). The impugned charge sheet has been issued just to create a hurdle in the rightful claim of the applicant for being promoted from the post of Principal Commissioner of Income

Tax to the post of Chief Commissioner of Income Tax or from being member of Income Tax Settlement Commission. Therefore, the impugned Charge Memo of 09.09.2020 should not be given effect to and the various relief prayed for granted.

4. Per contra, the Counter filed by the respondents denies all the allegations of the applicant and it is submitted that the applicant is guilty of various administrative misconducts as CIT (A)-4 Mumbai as elaborated in the 07 pages note of DGIT (Vig.) for taking further action against the applicant, for violation of various instructions of CBDT including Section 129 of the Income Tax Act, 1961.

4.1 That the applicant has violated CBDT instruction No. 20.2003 dated 23.12.2003 directing that appellate orders by Commissioner of Income Tax (Appeals) to be decided within 15 days. That these instructions have been reiterated vide CBDT letter F No. 279/Misc.53/2003-ITJ dated 19.06.2015 for strict compliance. That during the posting of the applicant as CIT (A)-4, Mumbai during the period 24.06.2015 to 26.08.2017, the applicant had passed appellate orders in 655 cases, out of which, 40 cases were selected on random basis for vigilance inspection by arranging the cases in chronological order of disposal and selecting every 16th case out of 40 cases selected for vigilance inspection in respect of appellate orders passed by applicant. That, in 14 cases CBDT instruction regarding timely disposal of appeals were violated by way of delay in disposal of the said appeals which cannot be rationalized by procedural and administrative causes of secretarial work such as in typing, dispatching etc., including of subordinate staff and goes more to imply that there were lapses on account of slack monitoring of subordinate staff which shows lack of supervisory

capability. Therefore the applicant cannot escape responsibility for his lapses as mere case of inadvertent mistake of omission or commission.

4.2 It is further submitted that violation of provision of Section 129 of Income Tax Act, 1961`on the part of the officer was also found on account of which major disciplinary action is underway against the applicant by way of the impugned charge memorandum dated 09.09.2020 under Rule 14 of CCS (CCA) Rules 1965. That the applicant has vide letter dated 11.09.2020 submitted his written statement of defense (WSD) dated 11.09.2020 which has been considered and rejected by Disciplinary Authority and the Disciplinary Authority has thereupon approved for appointment of IO & PO. That, in 4 of the delayed cases, the delay is of more than 60 days, including 2 cases having delay of more than 100 days which implies widespread violation of the said CBDT Instructions. Similarly, the reasons given for delay in passing appellate orders in the remaining 8 cases are administrative in nature and cannot be taken as a shield so as to justify widespread Violation of the said CBDT Instruction. The argument of the Applicant that the appellate orders were passed by him in favour of the department and that no grievance was filed by any one do not have any bearing on the fact that there was widespread violation of CBDT's Instruction No. 20/2003 (F. No. 279/Misc. 53/2003- ITJ) dated 23.12.2003. That, in case of one appellant namely M/s Bakul Investment Pvt. Ltd. for A.Y. 2004-05, whereas a combined notice was issued vide Notice no. CIT (A)-4/IT-53 to 59/ITO 2 (1)(1)/13-14 dated 29.06.2015 for 7 Assessment years fixing the date of hearing on 14.07.2015 and also served by the office, but the applicant did not follow the provision laid

down in Section 129 of Income Tax Act 1961 for giving further notice prior to passing the final order in the instant appeal.

4.3 That, the charge sheet which is being contested by the Applicant provides an opportunity to the applicant to provide his written statement of defense (WSD), wherein the applicant may produce such evidence along with his WSD, which shall be examined by the Disciplinary/Inquiry. Authority under the CCS (CCA) Rules, 1965 before taking a final view. It is further submitted that all the charges framed in the charge sheet are based on the facts of ADG (Vig) West Zone report made while carrying out vigilance inspection of CIT (A)-4 Mumbai during 01.01.2015 to 31.12.2017. The charges have been clearly spelt out and there is no vagueness in it. The charge sheet has been issued to the applicant after following the due procedure and with the approval of Disciplinary Authority. It is further submitted that the applicant may also request for an oral hearing in which case he may also avail an opportunity to present his case before the inquiry officer (I.O.) may be deem fit to avail this remedy. Thus, sufficient platforms are available to the applicant within the contours of law as codified in the CCS (CCA) Rules, 1965 and there is no need to rush to the Tribunal challenging the impugned Charge Memo for not being acted upon.

4.4 That the applicant has not sought quashing of the impugned charge memo and so the relief sought by the applicant is of interim nature and therefore not maintainable in eyes of law. That accordingly, the OA needs to be dismissed. In sum it submitted that the OA is challenged on the grounds that the main relief does not seek quashing of the charge memo itself and so only interim is prayed for. Also the interim relief is in the form of final relief. Hence on both the above grounds the OA

deserves to be dismissed. Further that it is no longer res integra that matter of interference of the courts at the charge memo stage is extremely limited. That in fact, the Hon. Apex Court in a catena of judgments has cautioned against any interference courts in disciplinary matters and so, this Tribunal's interference in the instant disciplinary proceedings which are still underway is unwarranted as per settled law. It is also argued that the errors, omissions and commissions by the applicant as stated in the charge memo clearly make out a case of grievous major misconduct warranting action under Rule-14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'Rules') and so there is no inherent error in the charge memo being issued under the said rule.

5. We have heard the ld counsels for both the parties at length and perused the records and pleadings filed very carefully.

6. On careful consideration we find that the following issues fall for consideration:

1) Whether this Tribunal can lawfully intervene in the charge memo given the limited jurisdiction in dealing with disciplinary matters at the charge memo stage

2) Whether the charges as contained in Article-I and Article-II can be construed as acts of misconduct with respect to the applicant acting in the capacity of a quasi-judicial officer while disposing off the stated appeals which form the basis of the alleged misconduct.

3) Whether any relief can be provided on the basis of the relief prayer as submitted in the OA

7. On the first issue we would state that while dealing with the instant matter, we are very conscious of the fact that there is a phalanx of judgements of the Hon Apex Court limiting powers of judicial review in matters of disciplinary proceedings at charge sheet issue stage and subsequent steps right up to the final stage of award of punishment

save in exceptional circumstances. We are also anxious so as to not to fall into the domain of interpretation of evidence in a disciplinary proceeding as that is also a no-go area for judicial review except on case to case basis and that too in exceptional circumstances. It is a thin line which needs to be tread with extreme care and caution and demands a very dispassionate consideration of available facts in the course of adjudicating the instant matter a key ingredient of which, is that, it involves examination of misconduct in the context of quasi-judicial functioning and not purely executive domain of conduct of duties of a government employee. This is so because, at the risk of repetition, we are aware of multitudes of citations discouraging courts from embarking upon the journey of interfering in the executive's jurisdiction of disciplinary proceedings. In that sense any examination by us is in the instant matter is at the outset a rarest of rare occasion warranted by the very atypical and specific circumstances therein.

8. Since the impugned charge memo has alleged major misconduct on part of the applicant it would be well that we understand what is misconduct itself at the outset. Black's Law Dictionary Sixth Edition defines misconduct as below:

> **"..A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."**

8.1 In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, at page 3026, the term 'Misconduct' has been defined as under:

> "The term misconduct implies a wrongful intention and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the

> term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

[As stated in Chairman & M.D. Bharat Pet. Corpn. Ltd.v T.K. Raju, AIR 2006 SC 3504, 2006 (3) SCC 143: 2006 (2) SCALE 553: 2006 (2) Supreme 369: 2006 (2) JT 624: 2006 (2) LLJ 113: 2006 (2) SLT 712: 2006 (109) FLR 232: 2006 (3) SLR 220].

In the matter of (M.M Malhotra v. Union of India, AIR 2006 SC 80; 2005 (8) SCC 351: 2005 (8) SCALE 202: 2005 (9) JT 506: 2005 (4) SCT 623:2005 SCC (L&S) 1139) the Hon Apex Court has observed as under:

> "…The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve---."

8.2 Very importantly in the matter of **Union of India v. J Ahmed, 1979 (1) SLR 840 p 846; 1979 SLJ 308; 1979 SC 1022; 1979 (3) SCR 504: 1979 (2) SCC 286**, the Hon Apex Court has defined Misconduct as:

> "…Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules…."

8.3 Similarly in the matter of **Bhagwati Prasad Dubey V. Food Corporation of India, 1987 (5) SLR 680, pp 682-683. 1987 Supp SCC 579; 1987 (4) JT 182; AIR 1988 SC 434**, the Hon Apex Court has opined:

> "Error of judgment- Not a misconduct – In the instant case under the pressure of necessity, the appellant acted to the best of his judgment. He ultimately sanctioned payment only at the rates at which another Public Undertaking,

namely, the SWC, had acquired the same goods. There is nothing whatever on record to show that the appellant had any special reasons for favouring M/s Equbal Ahmed Ansari."

8.4 Again in the matter of **State of Punjab v Ram Singh, 1992 (5) SLR 543, pp 545; 1992 (3) SCR 634: AIR 1992 SC 2188: 1992 (4) JT 253: 1992 (3) SLJ 160: 1992 (4) SCC 54**, Hon Apex Court has ordained:

"...Thus it could be seen that the word `misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve...."

In the matter of **Union of India v Upendra Singh, 1994 (1) SLR 831, pp 837; 1994 (2) SLJ 77; 1994 (3) SCC 357; 1994 (1) JT 658: 1994 (1) LLJ 808**, it has been held by the Hon Apex Court that misconduct exists against an officer such as:

"....

i. if he had acted in order to unduly favour a party;

ii. if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe maybe small, yet the fault is great'.

It is further stated that the instances above catalogued are not exhaustive. However, 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. Each case will depend upon the facts and no absolute rule can be postulated."

Thus we see that misconduct is not some technical violation or precipitates merely because an order is technically delayed/ even judicially not exact and disciplinary action is not warranted at the drop

of a hat. That there has to be evidence of the order leading to undue favour to a party or has been actuated by corrupt motive, moral turpitude, pre-meditated causes and so on.

9. Having set the contours of what 'Misconduct' is in a legal term rather than common parlance, we now, advert to quoting para-9 of the judgement and order of CAT PB in OA 201/2019 delivered on 16.10.2019 in the matter of Anuradha Mookerjee, Principal Commissioner Income Tax (hereinafter referred to as 'Mookerjee') as cited by the ld. applicant counsel. The para-9 is accordingly extracted below:

> **"..9. In this OA, the challenge is to the charge memo dated 14.08.2018. The general principle is that whenever an employee or officer assails a charge memo, the Courts or Tribunals would be reluctant to interfere with the same, unless OA-201/2019 7 the factors such as – (a) the charge memo having been issued by an officer not competent to do so; (b) the subject matter of the disciplinary proceedings is a fairly old and stale matter raked up at a stage when the officer or the employee was due for promotion; and (c) where even if the contents of the charges are taken as true, they do not constitute an act of misconduct; exist…"**

The key takeaway from the above extract which is relevant in the instant matter is that - even if the contents of the charge memo are taken as true, do they constitute an act of misconduct, much less major misconduct particularly read in the context of an action by a quasijudicial officer in the discharge of his quasi-judicial functions as in hearing a judicial matter by way of an appeal of an assessment made by the competent officer against which the appeal is preferred.

10. In the instant matter there are two Articles of charges contained in the Charge Memo and both need to be analysed on this score.

11. To do this we may take up the analysis of Article-I first. The Article-1 is extracted below for ready reference:

Annexure-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SUBACHAN RAM, IRS (IT: 87092), THE THEN CIT (APPEAL)-4, MUMBAI (PRESENTLY POSTED AS PR,CIT, PRAYAGRAJ).

Article of Charge-I

Shri Subachan Ram, IRS (IT: 87902), while functioning as Commissioner of Income Tax (Appeal)-4, Mumbai has passed 655 appellate orders during his tenure as CIT (A)-4, Mumbai. Out of 655 appellate orders only 40 cases were selected for vigilance inspection. Out of these 40 cases, in 14 cases (excluding the case of M/s Bakul Investments Pvt. Ltd. for A.Y. 2004-05 where date of hearing is prior to his taking charge as CIT (A)-4, Mumbai) i.e. in 35% of the cases, violation of CBDT's instruction No. 20/2003 [F. No. 279/misc.53/2003- ITJ] dated 23.12.2003 prescribing issuing of appellate order within 15 days of the last hearing, was found. Therefore, compliance with said CBDT Instruction in the remaining 615 appellate orders passed by the Officer is not known as the same were subject to vigilance inspection. The break-up of the 14 cases in which there is delay beyond 15 days in issuing appellate orders from the last date of hearing, in violation of CBDT Instruction in this regard, is as under: -

0-15 days	16-30 days	31-60 days	Above 60 days
3	4	2	5

From the above table, it is evident that in 7 cases, the appellate orders have been issued after a delay of more than 30 days beyond the period of 15 days from the date of last hearing. These 7 cases include the case of M/s Clairant India Ltd A.Y. 2010-11 where there is a delay of 55 days. The Officer has claimed that there was no delay in this case as the Director was asked to explain certain things on 21.09.2015 and due to his non-attendance the appellate order was passed on 04.10.2016. However, as per the appellate record inspected, the case was last heard on 26.07.2016 and the order was passed on 04.10.2016 i.e. after a delay of 55 days beyond 15 days from the date of last hearing. It is not understood as to how non-attendance of the Director on 21.09.2015 would make the appellate order, passed more than one year later on 04.10.2016, without delay as per CBDT Instruction.

By the aforesaid act, Shri Subachan Ram has failed to maintain absolute integrity and has shown complete lack of devotion to duty and has, thus, exhibited the conduct unbecoming of a Government servant thereby contravened the provision Rule 3(1) (i), Rule 3(1)(ii), Rule 3 (1)(iii) and Rules 3 (1)(xviii) of the Central Civil Services (Conduct) Rules, 1964.

Annexure-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SUBACHAN RAM, IRS (IT: 87092), THE THEN CIT (APPEAL)-4, MUMBAI (PRESENTLY POSTED AS PR,CIT, PRAYAGRAJ).

Article of Charge-I

Shri Subachan Ram, IRS (IT: 87902), while functioning as Commissioner of Income Tax (Appeal)-4, Mumbai has passed 655 appellate orders during his tenure as CIT (A)-4, Mumbai. Out of 655 appellate orders only 40 cases were selected for vigilance inspection. Out of these 40 cases, in 14 cases (excluding the case of M/s Bakul Investments Pvt. Ltd. for A.Y. 2004-05 where date of hearing is prior to his taking charge as CIT (A)-4, Mumbai) i.e. in 35% of the cases, violation of CBDT's instruction No. 20/2003 [F. No. 279/misc.53/2003- ITJ] dated 23.12.2003 prescribing issuing of appellate order within 15 days of the last hearing, was found. Therefore, compliance with said CBDT Instruction in the remaining 615 appellate orders passed by the Officer is not known as the same were subject to vigilance inspection. The break-up of the 14 cases in which there is delay beyond 15 days in issuing appellate orders from the last date of hearing, in violation of CBDT Instruction in this regard, is as under: -

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By the aforesaid act, Shri Subachan Ram has failed to maintain absolute integrity and has shown complete lack of devotion to duty and has, thus, exhibited the conduct unbecoming of a Government servant thereby contravened the provision Rule 3(1) (i), Rule 3(1)(ii), Rule 3 (1)(iii) and Rules 3 (1)(xviii) of the Central Civil Services (Conduct) Rules, 1964.

12. As may be seen, in Article-I, the charge is that in the random analysis of 40 cases out of 615, the applicant had delayed the decision in 14 cases and in which 05 were delayed beyond 60 days and 02 between 31-60 days, 04 in 15-30 days and 03 in less than 15 days. That since CBDT's instruction No.20/2003 [F.No. 279/misc.53/2003-ITJ] dated 21.12.2003 prescribe a 15 days' time limit and since the applicant took more than 15 days' time in deciding 11 cases out of 40 analysed from a base of 655, therefore there is sufficient ground to construe this time delay as an act of major misconduct warranting disciplinary action under Rule-14 of the CCA (CCA) Rules, 1965.

13. Apart from the delay no evidence or grounds have been given as to the possible culpability of the applicant in deliberately delaying the said appeal cases for some pecuniary gain or any such act indicative of lack of integrity or moral turpitude or major loss to the government.

14. Therefore, going forward, the act amounting to misconduct has to be judged on the limited length and width of imputations, grounds and evidence presented by the respondents. For this it would be well to quote paras-13 to 15 and para-18 of the Mookerjee judgement (supra) which are reproduced herein below for ready reference:

START OF CITATION

"…13. Even while ensuring that a quasi judicial authority acts independently, he cannot be provided absolute immunity. OA-201/2019 9 If there exists adequate proof or material to disclose that the powers have been misused with an ulterior motive, or for personal gain, the option for the administration to take disciplinary action cannot be shut. It is keeping in view, these two predominant considerations that the Hon"ble Supreme Court in Union of India v A. N. Saxena"s case observed as under:

> "7. 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.
>
> 8. 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 quasijudicial proceedings is not correct. It is true that when an officer is performing judicial or quasijudicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken 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 was reiterated in Zunjarrao Bhikaji Nagarkar‟s case. That was a case relating to an officer of the Central Excise Department. Acting as an Assessing Authority, he confiscated certain goods, and levied excise duty of Rs.3,57,000/-. Alleging that he did not levy penalty only with a motive to help the manufacturer, disciplinary proceedings were initiated against him. Challenging the charge memorandum, he filed an OA before the Bombay Bench of this Tribunal. On dismissal of the OA, he filed a writ petition before the Bombay High Court. That was also dismissed in limine, and then he approached the Hon‟ble Supreme Court. By undertaking extensive discussion on the proposition that a mere wrong interpretation cannot be treated as an act of misconduct, Their Lordships observed as under:

> "40. ....Of course it is a different matter altogether if it is deliberate and actuated by mala fides.
>
> 41. When penalty is not levied, the assessed certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessed or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant

> showed "favour" to the assessed by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can OA-201/2019 11 be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal."

Incidentally, the judgment in Zunjarrao Bhikaji Nagarkar is relied upon by both the parties.

14. In S. Rajguru''s case, this Tribunal referred to that very judgment of the Hon"ble Supreme Court on this issue. Paras 42 and 43 of the judgment were quoted. They read as under:

> "42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.
>
> 43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged OA-201/2019 12 herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication where under quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."
>
> The OA was allowed and the charge memo issued to the officer, CIT (Appeals), with the allegation pertaining to discharge of quasi judicial powers, was set aside. The judgment of the Tribunal was upheld by the

Hon‟ble Delhi High Court in WP (C) No.5113/2014, decided on 13.08.2014. Their Lordships extensively quoted from the Judgment of the Hon‟ble Supreme Court in K. K. Dhawan and Zunjarrao Bhikaji Nagarkar‟s cases, apart from other judgments.

15. What becomes evident from the above discussion is that there is no prohibition as such against the initiation of disciplinary proceedings against an officer in relation to discharge of quasi judicial functions, but it must be with utmost care and caution. The mere existence of a view different from the one taken by the officer in the course of adjudication, by itself, cannot be treated as an act of misconduct. There must exist adequate material, even at the stage of issuance of charge OA-201/2019 13 memo, which discloses the existence of ulterior motive, or dishonest intention on the part of the officer in deciding the matter in a particular way. Therefore, we answer the first issue to the effect that the disciplinary authority in this case does have the power to initiate the disciplinary proceedings in relation to the discharge of quasi judicial functions by the applicant also, subject to the rider that there must exist adequate material, even at the stage of issuance of charge memo, to disclose that the power has been misused for wrongful gains.

18. Normally, the disciplinary proceedings are initiated whenever the concerned authority receives information about the acts of misconduct on the part of an employee, and the truth or otherwise thereof, is to be established in the disciplinary inquiry. The Hon‟ble Supreme Court, through a catena of judgments held that if the disciplinary proceedings pertain to the manner in which an officer has discharged his quasi judicial functions, the mere information is not adequate, and suspicion alone cannot constitute the basis. The relevant paragraphs of the judgments in A. N. Saxena and Zunjarrao Bhikaji Nagarkar‟s cases have already been extracted hereinabove. This has been scrupulously followed by this Tribunal in S. Rajguru‟s case, which, in turn, was upheld by the Hon‟ble High Court of Delhi….”

END OF CITATION..

15. What the judgement emphasizes is that negligence, minor carelessness or omission, in a quasi-judicial adjudication, is not perceivable as misconduct much less a major misconduct unless the same has definitive elements of culpability. A wrong interpretation of law in a quasi-judicial function cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fide. Records in the present case do not show if the

disciplinary authority had any information within its possession from which it could form an opinion that the applicant had showed 'favour' in the said delay in disposal of the appeals. No grounds of lack of integrity or moral turpitude are taken by the respondents. There was no action which even required correction in a higher fora on account of the purported delay. That such issues as some delay cannot form basis for initiating disciplinary proceedings against an officer in performance of quasi judicial functions because it must be kept in mind that any decision of a quasi-judicial authority, is always subject to judicial supervision / check in higher fora for wrong interpretation of law or facts.

16. The key point emerging from above is that there must be adequate material **even at the stage of issuance of charge memo which discloses the existence of ulterior motive, or dishonest intention on the part of the officer in deciding the matter in a particular way and that this is particularly important if a disciplinary action is contemplated against a quasi-judicial officer. In the absence of same disciplinary action becomes heavily suspect in its motives and rationality**.

17. In the instant case, there is not even an iota of evidence even vaguely indicated so as to allege that the applicant resorted to any acts of dishonesty or wrongful gain in the said delay of 11 cases (time taken more than 15 days). The whole multiplex of the charge memo is assiduously built on the pillars of the so called delayed disposal and that too if one takes a wee bit seriously, actually just about 05 cases out of 40 out of 655 selected in a random manner wherein the delay is of more than 60 days. If we take this as any measure of delay, one would

shudder to think what can be thought of delay of more than a year and more in multitudes of cases in district courts, several tribunals constituted under Article-323A and 323B of the Constitution. Even this very tribunal would be suspect if such a bench mark is fixed for disposal of cases and one is not even mentioning the honourable higher courts with due deference to the puny nature of this Tribunal in the overall schema of the country's judiciary. Delay which cannot be classified as motivated or malicious cannot be taken as evidence to assert that the applicant had ulterior motives or had a deliberate stake in personal pecuniary gain or any other benefit which would seriously cast aspersions on his honesty. The sheer fact that the delay is not pre-meditated by the applicant is evident from the evidence that the respondents took a random sampling methodology and the delay is across the 655 sample universe and so by the mathematical laws of statistics and probability there can be no planned diabolical schema in the mind of the applicant to pick and choose cases and delay them for any personal gain whatosover. The respondents have also not stated that there is any financial loss to them on account of the stated delay. So except for some delay and that too truly only in five cases out of 40 analysed from a sum of 655 there is no occasion to consider any substantiated ground for treating the delay as a matter of misconduct much less major misconduct as asserted by the respondents. **Most importantly the charge of delay in disposal of some appeals is held against the applicant while the said charge itself has been brought forth in a charge memo after a delay of three to five years. Why were the respondents waiting all these years for an offence committed in their eyes which is so grievous as to be classified as a major misconduct. And then on top of that the charge memo**

seems to have been issued hurriedly just on the verge of retirement of the officer. Haste makes waste – so goes an old adage which probably is the true reason for waking from deep slumber by the respondents and slapping the charge memo which is so weak on the stated grounds as to find no substratum to stand upon.

18. It is therefore well-nigh close to mission impossible no matter how much we labour in our efforts to be able to hang the applicant on the grounds of some delay for which no culpability or mens rea or deliberate misdemeanor exists; or, evidence exists with any degree of justifiability as held by the respondents in the charge memo. And then to hold up the handcuffs of Rule-14 with possible potential of a life-term punishment is certainly hugely disproportionate to the perceived waywardness of the applicant acting as a quasi-judicial officer in deciding quasi-judicial matters. It has to be understood that in deciding judicial / quasi judicial case related matters requiring date-based hearing, the cases have to be taken on a turn-by-turn basis as in a cause list and then proceeded to be decided upon. In fact, without stealing the thunder of the respondents from the Article-II of the charge memo which we would analyse very shortly, it would seem that in this charge the applicant inn Article-I of the charge memo is being held as a major accused on account of delay in disposal of quasi-judicial cases whereas in the Article-II the charge memo an edifice is built on the grounds of disposal done in a hurried manner in a particular case. So, the axe of the department seems destined to fall whatsoever and howsoever one does a judicial matter which is liable to be judged as an act of hasty arbitrariness and needless witch hunting on part of the respondents.

19. In the event therefore we are liable to conclude inspite of our best efforts otherwise and state with conviction that the Article-I of the charge memo cannot sustain.

20. We may now take up Article-II of the charge memo. In order to do this it would be well to reproduce the same and is therefore done as below:

Annexure-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SUBACHAN RAM, IRS (IT: 87092), THE THEN CIT (APPEAL)-4, MUMBAI (PRESENTLY POSTED AS PR,CIT, PRAYAGRAJ)

Annexure-I

Article of Charge-II

Shri Subachan Ram, while functioning as CIT (Appeals)-4, Mumbai, during the period 24.06.2015 to 26.08.2017, passed appellate order dated 06.10.2015 in the case of Bakul Investments Pvt. Ltd. for A.Y. 2004-05. The appellate record of M/s Bakul Investments Pvt. Ltd. for A.Y. 2004-05 indicates that notice of hearing dated 18.03.2014 was issued to the appellant by the predecessor of Shri Subachan Ram fixing the hearing on 01.05.2014. The Order Sheet available on record indicates that the appellant attended and sought adjournment of hearing which was accordingly adjourned to 19.06.2014. Again on 18.06.2014, the appellant attended and sought adjournment of hearing which was again adjourned to 18.09.2014. Thereafter, no notices or hearings are evident from the appellate record. Shri Subachan Ram assumed the charge of CIT (A)-4, Mumbai, on 24.06.2015, and without issuing any notice of hearing to M/s Bakul Investments Pvt. Ltd. passed the appellate order in this case for A.Y. 2004-05 on 06.10.2015. As per the appellate record, the only submission made by the appellant in this case is the Memorandum of Appeal in Form No. 35, along with Statement of Facts and Grounds of Appeal and its enclosures. During appellate proceedings, no further submission has been made by the appellant and only adjournments were sought during hearings before the predecessor of Shri Subachan Ram.

Section 129 of the Income Tax Act, 1961, provides that whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor after giving an opportunity of being heard. In the case of M/s Bakul Investments Pvt. Ltd. for A.Y. 2004-05, where no details had hitherto been filed during appellate proceedings. Shri Subachan Ram has decided the appeal without even issuing a notice of hearing to the appellant. It is a settled principle of income-tax law that a notice of hearing has to be issued to the assessed before concluding any proceeding under the Income Tax Act, 1961. Shri Subachan Ram has admittedly decided the appeal on the basis of details available on record, without issuing any notice of hearing to the appellant. Therefore, by deciding the appeal without issuing notice of hearing to the appellant, merely on the basis of the Memorandum of Appeal in Form No. 35, Shri Subachan Ram, the then CIT (Appeals)-4, Mumbai, has violated the provisions of Section 129 of the Income Tax Act, 1961.

By his aforesaid acts, Shri Subachan Ram, failed to maintain absolute integrity, devotion to duty, exhibited conduct unbecoming of a Government servant and failed to discharge his duties with the highest degree of professionalism and dedication to the best of his abilities, and thereby contravened the provisions of Rule 3(1) (i), Rule 3(1)(ii), Rule 3 (1)(iii) and Rules 3 (1)(xxi) of the CCS (Conduct) Rules, 1964.

Annexure-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SUBACHAN RAM, IRS (IT: 87092), THE THEN CIT (APPEAL)-4, MUMBAI (PRESENTLY POSTED AS PR,CIT, PRAYAGRAJ)

Article of Charge-II

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Section 129 of the Income Tax Act, 1961, provides that whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor after giving an opportunity of being heard. In the case of M/s Bakul Investments Pvt. Ltd. for A.Y. 2004-05, where no details had hitherto been filed during appellate proceedings. Shri Subachan Ram has decided the appeal without even issuing a notice of hearing to the appellant. It is a settled principle of income-tax law that a notice of hearing has to be issued to the assessed before concluding any proceeding under the Income Tax Act, 1961. Shri Subachan Ram has admittedly decided the appeal on the basis of details available on record, without issuing any notice of hearing to the appellant. Therefore, by deciding the appeal without issuing notice of hearing to the appellant, merely on the basis of the Memorandum of Appeal in Form No. 35, Shri Subachan Ram, the then CIT (Appeals)-4, Mumbai, has violated the provisions of Section 129 of the Income Tax Act, 1961.

By his aforesaid acts, Shri Subachan Ram, failed to maintain absolute integrity, devotion to duty, exhibited conduct unbecoming of a Government servant and failed to discharge his duties with the highest degree of professionalism and dedication to the best of his abilities, and thereby contravened the provisions of Rule 3(1) (i), Rule 3(1)(ii), Rule 3 (1)(iii) and Rules 3 (1)(xxi) of the CCS (Conduct) Rules, 1964.

21. The key purport of the charge is that the applicant while functioning as CIT(Appeals)-4 Mumbai, during the period 24.06,2015 to

26.08.2017, passed an order deciding an appeal without giving notice as required under Section-129 of the Income Tax Act, 1961.

22. In order to examine this we need to revert to the plea made by the applicant in this connection. The applicant has stated in his OA that the appellate order was passed without issue of notice to the appellant M/s Bakul Investment Pvt. Ltd. for A.Y. 2004-05, because a combined notice no. CIT (A)-4/IT-53 TO 59/ITO 2 (1)(1)/13-14 dated 29.06.2015 had already been issued and the date for hearing was accordingly fixed for 14.07.2015. That this notice was already issued and served by the office and so there was no need to issue any additional notice. That the matter was delayed already due to the truant attitude of the appellant and hence the matter was decided by the applicant without further delay and excuse of uncalled for time-wasting notices. The plea of the respondents is that a specific notice to the assessee was absent and the same is required to be given under all circumstances as per section 129 of the Income Tax Act, 1961.

23. From the charge memo Article-II it may be seen that in the case of M/s Bakul Investments:

> "….The appellate record of M/s Bakul Investments Pvt. Ltd. for A.Y. 2004-05 indicates that notice of hearing dated 18.03.2014 was issued to the appellant by the predecessor of Shri Subachan Ram fixing the hearing on 01.05.2014. The Order Sheet available on record indicates that the appellant attended and sought adjournment of hearing which was accordingly adjourned to 19.06.2014. Again on 18.06.2014, the appellant attended and sought adjournment of hearing which was again adjourned to 18.09.2014. …"

Now we may see what the Section 129 of the Income Tax Act, 1961 has to say. The relevant section is extracted below:

> **"..129. Change of incumbent of an office. Whenever in respect of any proceeding under this Act an income tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income tax authority so succeeding may continue the**

> **proceeding from the stage at which the proceeding was left by his predecessor: Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof by reopened or that before any order of assessment is passed against him, he be heard…"**

In the instant matter the respondents have said nothing about the fact that the assessee concerned had demanded any reopening etc as provided for in the provision quoted above. Therefore, the contention of the applicant that given the fact that the provision clearly permits the income tax authority so succeeding to continue the proceeding from the stage at which the proceeding was left by his predecessor, he did not err when he proceeded without any further notice as adequate notice had already been given even as per statement of the respondents in the charge memo and there was no representation by the assessee with respect to opening of the case as also permitted in the section 129. The same is even substantiated by the dates of notices by the predecessor to the assessee, viz on 18.03.2014, 19.06.2014, 18.09.2014 and the fact that the concerned was taking adjournments. In such a case why should specific notice be required and opportunity be given again and again is truly a matter of wonderment, especially when the later part of the section-129 enables the assessee to seek any further reopening of his case before the new officer and no such plea was made. Further any notice is required by way of opportunity to the assessed to present his or her case with regards to the potential assessment made by the competent officer at the stage of appeal like any quasi-judicial matter. In the instant matter, multiple opportunities have been given and even then it is alleged by respondents that more opportunity should have been given as provided for in the Section-129 of the Income Tax Act 1961. This argument does not seem kosher.

24. While admittedly this Tribunal is no one to interpret the Income Tax Act in any manner we are certainly concerned with the way the provision is being read with respect to taking disciplinary action against an employee covered under the Rule-14 which is for major punishment for misconduct as required under CCS (CCA) Rules1965 which Rules are undeniably in the jurisdiction and universe of this Tribunal. So this Tribunal is well within its clothes in trying to sift legal fiction in a matter when disciplinary action is involved under a provision which is within the mandate of the Tribunal. Having said that, it is quite preposterous to imagine that just because the applicant has not given notice in the already delayed matter and in which multiple notices had been given, therefore the applicant stands guilty of disposal. Such a view is overlooking two additional points in the section 129 viz, that the succeeding officer may continue the proceedings from the stage at which the proceeding was left by his predecessor and that an assessee has to given opportunity should there be a demand for reopening of the case. That in the present matter there was no such demand by the assessee and so the applicant was well within lawful action for proceeding with the matter from the stage at which it was left by the predecessor. Thus, the assertion of the respondents smacks of needless over reach and being injudicious in nature. There cannot be a case built on hay for a culpability punishable as a major punishment under Rule-14 of the CCS (CCA) Rules, 1965. Here again we are wont to assert the issue of guilt as in desire to have pecuniary gain or benefit leading to major misconduct or major lapse in a grave matter, earth-shaking enough, to attract the tsunami of punishment under Rule-14. In order to drive home this point, we would do well as to **quote para-18 of**

the Mookerjee judgement (supra) extracts of which are reproduced below for ready reference:

> "..18. Normally, the disciplinary proceedings are initiated whenever the concerned authority receives information about the acts of misconduct on the part of an employee, and the truth or otherwise thereof, is to be established in the disciplinary inquiry. The Hon"ble Supreme Court, through a catena of judgments held that if the disciplinary proceedings pertain to the manner in which an officer has discharged his quasi judicial functions, the mere information is not adequate, and suspicion alone cannot constitute the basis. The relevant paragraphs of the judgments in A. N. Saxena and Zunjarrao Bhikaji Nagarkar"s cases have already been extracted hereinabove. This has been scrupulously followed by this Tribunal in S. Rajguru"s case, which, in turn, was upheld by the Hon"ble High Court of Delhi…."

25. Thus, on the basis of foregoing discussions, it is quite reasonable in our humble opinion to surmise that the respondents have based the charge memo Article-II solely upon forced imagination. Para-30 of the Mookerjee judgement (supra) drives home the point and is reproduced hereinbelow for ready reference:

> "…It is fairly well known that if a person vested with the power to alter the legal status of another, permits his imagination to work, it may take him to a level, which he may not have imagined at all. The executive powers are required to be exercised on the basis of objective and verifiable material, and not on the basis of surmises and presumptions and imaginations.."

Suffice it to say that sheer lack of specific notice from the applicant as authority sitting in decision of an appeal in case of M/s Bakul Investments, in which (a) sufficient notice is already given by the predecessor and the fact that (b) the appeal hearing officer is empowered to proceed from the stage left by the predecessor and the fact that (c) no reopening of the matter was demanded by the assessee (no records stated in the charge memo on this score) as provided for in the Section-129, all – point out loudly to the conclusion there is a definitive lack of substantive grounds for violation of section -129 of the

Income Tax Act itself and so a charge for misconduct much less major misconduct under Rule-14 cannot be made out. It must be understood that in the nature of deciding cases, with regards to the judicial / quasijudicial functioning of passing orders as if a Court, it is not person specific by name who acts but the court of the quasi-judicial authority and it is this authority which takes the proceedings forward. In this case the notice and other conditions have been sufficiently met as per evidence presented by both sides and so it would be wanton to surmise that there was culpability of the nature of misconduct much less a major misconduct on part of the charged officer in deciding the matter of appeal with respect to the assessee.

26. Just like the analysis in respect of Article-I above, it is important to understand that the evidence in the Article-II also is not able to substantiate any ulterior motives or deliberate stake in personal pecuniary gain or any other benefit on part of the charged officer. The respondents have also not stated that there is any financial loss to them on account of the stated expedited disposal. In any case, as in the matter of Article-I, here also there are higher fora available for taking up the matter of the assessee in case of a wrongly settled appeal. This actually is the beauty of any quasi-judicial process. There are in-built checks and balances and this goes right upto the highest court of the land – viz upto the Hon Supreme Court. So, except for lack of prenotice to the assessee in terms of a pedantic implementation of the Section-129 of the IT Act, there is no occasion to consider any substantial ground for the misconduct charge, much less major misconduct by the respondents.

27. It is therefore once again well-nigh close to mission impossible no matter how much we labour in our efforts to be able to hang the applicant on the grounds of the said absence of notice. There is no culpability or mens rea or deliberate misdemeanor proof / evidence presented or exists or stated with any degree of conviction by the respondents in the charge memo on this score or during the course of the arguments. And then to hold up the handcuffs of Rule-14 with possible potential of a life term punishment is certainly hugely disproportionate to the perceived omission by the applicant acting as a quasi-judicial officer in deciding quasi-judicial appeal of M/s Bakul Investments. In fact, it would seem that in this charge the applicant is being held as a major offender on account of his efforts in expediting disposal of a quasi-judicial case. This stands in stark contrast to the charge edifice built in Article-I wherein the grounds of delay in disposal were taken. Such action is but a wanton display of arbitrary executive action which is totally anachronistic and capricious in nature. So, the plea of the respondent-department cannot stand tall on the altar of uniform truth whatsoever and howsoever one tries to bend it like Beckam as it were. In thoughtful retrospect, the charge is a consequence of hasty arbitrariness and needless over-reach on part of the respondents motivated as it seems they were in serving the notice for disciplinary action less than 48 hours before the said DPC for considering the promotion of the applicant / selection as the Member of the Income Tax Settlement Commission for matters three to five years old. If the charge in Article-II is worthy of being classified as a major misconduct, why were the respondents sleeping since 2015/2017 to frame the charge. Are they not guilty of delay, something they assert as a raison de etre in case of Charge Article-I. For unknown

reasons the government machinery has just woken up to it executive rights when the officer whom they want to punish is about to retire even while several years have passed by when the stated offence had allegedly occurred.

28. What one fails to understand on the other hand is, that there is a system of assessment of Annual Performance Assessment Report (APAR) – wherein the performance of an officer is also told to the applicant in terms of the grading which is made known to the officer reported upon. Therefore why in such annual assessment or APAR are not such gaps in performance pointed out, particularly when the annual confidential reports are no longer confidential – the performance level is told to the concerned officer who can represent against the grading of assessment even. Why is there then need to take disciplinary action after a belated period when better and timely remedy is available as per scheme of APAR. A stitch in time saves nine – so goes a school learnt proverb. Why is it not applied by grown up adults? It is so much more rational, if such discrepancies as levelled in the major disciplinary proceedings are firstly pointed out in the annual assessment itself, thereby enabling an opportunity to the concerned officer to be able to effect improvement as it were – on the fly – and any trouble could also be nicked in the bud rather than be allowed to fester into a wound or become a bee-hive of problems. Is the goal of the employer to punish rather than improve its employees and senior officers? Are its human resources at such senior level as the applicant so cheap, surplus and easily dispensable? Is this not a failure of a system which needs to be attended to urgently? Is it good to punish individuals for system failure?

29. All of these arguments lead us to the inevitable path that makes us unable to agree to the contention of the respondents there is adequate culpability on part of the applicant warranting disciplinary action even at the initiation stage of the purported disciplinary proceedings. In the result the assertion by the respondents does not hold water and is liable to fail.

30. As regards the respondents' plea that the relief prayer does not seek quashing of the impugned charge memo and hence no relief can be given, it is our understanding that the prayer seeking stoppage of action by the respondents of any further action on the impugned issued charge memo is an actionable relief and even otherwise the Tribunal is empowered to grant any relief which is required to meet the ends of justice. Earl Warren – Chief Justice of the United States of America had famously said that –"it is the spirit and not the form of law that keeps justice alive" and the Hon Apex Court in the matter of Charles K Skaria vs C. Mathew, (1980) 2 SCC 752 has said that "equity overpowers technicality where human justice is at stake". Justice after all is the constant and perpetual will to allot to every man his due. In such a situation we are inclined to consider the relief prayed for by the applicant in spirit and word. The Ld applicant counsel is ready to make the minor amendment if deemed necessary to add the phrase '**quash the impugned order**' in the relief clause but is also making the plea that the applicant is due to retire on 31.12.2020 which would leave little time to take up the matter again and lead to avoidable delay on superficial grounds and that may be deemed covered in the prayer to the Tribunal viz – '**any other and further order may be passed as this Hon'ble Court may deem fit and proper, in the facts and**

circumstances of the case'. Further since we are disposing of the OA finally hence there is no gainsay in ld respondent counsel's argument on the fact of similarity in the nature of the interim and the main relief prayer.

31. Based on the foregoing discussions we are of the opinion that there is justifiable substance in the plea of the applicant that the impugned Charge Memo may not be acted upon further in any manner with respect to proceeding it to the next stage under the CCS (CCA) Rules, 1965. It would also not affect any promotion or selection of the applicant with respect to any assignment as stated in the OA or any other service matter. The OA is allowed accordingly.

32. No costs.

(Devendra Chaudhry)
Member – A

(Justice Vijay Lakshmi)
Member – J

/M.M/