

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 1262/1991 X98xx
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DATE OF DECISION 1st June 1995

Shri N.K. Jain Applicant (s)

Shri M.L. Dhri Advocate for the Applicant (s)
Versus
Union of India Respondent (s)

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

CORAM : Hon'ble Mr. A.v. Haridasan, Vice Chairman (J)
and

The Hon'ble Mr. K. Muthukumar, Member (A)

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*

A. v. Haridasan
(A. v. Haridasan)
Vice Chairman (J)

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1262/1991

New Delhi this the 1st June 1995

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)
Hon'ble Mr. K. Muthukumar, Member (A)

Shri N.K. Jain,
Assistant Director,
Income Tax (Recovery)
6th Floor, Mayur Bhawan,
New Delhi.

... Applicant

(By Advocate: Shri M.L. Ohri)

vs

1. Union of India,
through The Secretary,
Department of Revenue,
Ministry of Finance,
New Delhi.

2. Central Board of District Taxes,
Through its Chairman,
North Block,
New Delhi.

... Respondents

(By Advocate: Shri R.S. Aggarwal)

O R D E R

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

The applicant, Shri N.K. Jain, Assistant Director Income Tax (Recovery) has in this application filed on 27.5.1991 under Section 19 of the A.T. Act prayed that the chargesheet issued under Rule 16 of CCS(CCA) Rules 1965 against him may be quashed and the respondents be directed to issue promotion order of the applicant to the rank of Deputy Commissioner with effect from 27.12.1989 with all consequential benefits. The facts necessary for adjudication of the facts involved in this case can be briefly stated as follows: The applicant who joined the Income Tax Department on 28.10.1959 as Inspector of the Income Tax was promoted

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as Income Tax Officer in Class II in 1987. He was further promoted as Income Tax Officer Class I on ad hoc basis on 13.12.1978 and was regularised on the said post with effect from 21.9.1982. He was granted Senior Scale of pay with effect from 1.12.1985 and he was designated as Assistant Commissioner alongwith others on 1.4.1988. On 13.3.1989 he was served with a Memo of Allegations which read as follows:

"STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION AGAINST SHRI N.K. JAIN, A GROUP 'A' OFFICER NOW POSTED AS ASSISTANT DIRECTOR OF INCOME TAX, SAFEMFOPA, DELHI IS PROPOSED TO BE TAKEN

Shri N.K. Jain, A Group 'A' Officer now posted as Assistant Director of Income Tax, SAFEMFOPA, Delhi had earlier worked as Income Tax Officer, Distt. VII(8), Delhi during the period from 29.10.1984 to 21.7.1986. While functioning as Income Tax Officer, Distt. VII(8), Delhi during the aforesaid period, Shri Jain completed assessments in the below mentioned cases for the following assessment years:

<u>NAMES OF THE CASES</u>	<u>ASSESSMENT YEAR</u>
i. M/s. Interport India	1984-85
ii. Shrimati Padmawati Nayar	1985-86
iii. M/s. Sangam Iron & Steel Co.	1985-86
iv. M/s. Hemant Plastics	1985-86
v. M/s. Punjab Flour Mill	1983-84

An examination of the records relating to the assessments has revealed the following position.

I. M/S. INTERPORT INDIA

ASSESSMENT YEAR 1984-85

2. The assessee filed its return of income for the assessment year 1984-85 on 20.3.1985 declaring

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therein income of Rs. 43,710/-. Shri N.K. Jain completed the assessment u/s. 143 (3) on 29.6.1985 on income of Rs. 49,609/-.

- i) In the accounting year under reference, the assessee had invested Rs. 8.20 lakhs in the purchase of land had shown only Rs. 50/- as cost of preparation of the lease deed, for acquisition of the above land. Clause 3 of the DDA's letter dated 9.6.1983 provided that the assessee was required to bear the cost of preparation, stamping and registration of lease deed/conveyance deed and the Corporation tax levied on transfer of immovable property. Thus apart from the purchase consideration of Rs. 8.20 lakhs, the assessee was also liable to bear expenditure on stamp paper, registration charges etc. Normally, registration charges, cost of stamp deed etc. amount to 10% of the purchase consideration whereas the assessee had shown expenditure on this account only at Rs. 50/-. Shri Jain did not make any efforts to find out the actual expenses incurred on these items and the source thereof before completing the assessment.
- ii) In the accounting year under reference, there was a change in the constitution of the assessee firm in as much as two new partners joined the firm. As per the partnership deed, one of the incoming partners was a non-resident. He was required to bring in capital in foreign currency equivalent to Rs. 50,000/- and the partnership deed was subject to the approval by the Reserve Bank of India. Shri Jain was expected to verify whether the Reserve Bank of India had accorded approval to this arrangement before granting registration to the firm. However Shri Jain did not call for these details and examine this point before completing the assessment and granting registration to the firm.
- iii) Under the provisions of Income Tax Act and the rules framed thereunder, the assessee firm was entitled to registration only if it had filed application in Form No. 10/11A at the relevant time. The case records do not show that the assessee firm had in fact filed any application in Form No. 11/11A at the relevant time. Applications in Form Nos. 11/11A as found on record do not bear the stamp of the receipt counter. The Central return/Das receipt Register for the relevant period does not show that Form Nos. 11/11A were received at the Dak counter at the relevant time. This fact raised serious doubts about the filing of applications in forms No. 11/11A at the relevant time. However Shri Jain ignored this fact while granting registration to the firm.

iv) The capital accounts of the two new partners showed that they had not debited any withdrawals for their house-hold expenses. The 3rd partner had also debited withdrawals of only Rs. 7,462/- which were apparently inadequate for meeting his house-hold expenses. However, Shri Jain did not examine why two new partners had not shown any withdrawals for house-hold expenses and also whether the withdrawals of Rs. 7,462/- shown by the 3rd partner were adequate.

3. The facts stated above show that Shri Jain completed the assessment in the above case in a careless and negligent manner without making proper inquiry/verification warranted by the facts of the case.

II. SMT. PADMAVATI NAYAR

ASSESSMENT YEAR 1985-86

4. The assessee filed her return of income for the assessment year 1985-86 on 31.6.1985 showing therein income of Rs. 4,84,860/-. Shri Jain completed the assessment u/s. 143(3) on 13.4.1986 on income of Rs. 4,89,960/-.

i) The liability side of the balance sheet showed that the assessee had taken interest bearing loans of Rs. 17,88,644/- on which interest of Rs. 81,040/- was paid. However, the asset side of the balance sheet showed advances given by the assessee, amounting to Rs. 17 lakhs to Shri V.K. Nayar and Sanjiv Nayar, close relatives of the assessee. However, the assess did not charge any interest on the amounts shown as advanced to the two close relatives, though the assessee paid interest of Rs. 81,040/- on the amounts borrowed. Shri Jain did not verify why interest was not charged on the amounts advanced to S/Shri V.K. Nayar and Sanjiv Nayar, whether the advances to them were during the course of the assessee's business and whether, there was any connection between the amounts borrowed by the assessee from others and advanced to close relatives, with a view to finding out if any part of the interest paid was liable to be disallowed on account of the funds borrowed having been diverted to interest from loans given by the assessee.

ii) The liability side of the balance sheet showed that the assessee had taken loans from 5 parties including one Smt. Shabnam. The assessee claimed

to have taken a loan of Rs. 28,000/- from Smt. Shabnam. The confirmation letter filed by the assessee in support of this loan showed that Smt. Shabnam was being assessed to income tax at Indore. However, neither the G.I.R. No./permanent account No. nor the ward in which she was being assessed to income tax was indicated in the said confirmation letter. Shri Jain however accepted the loan as genuine without making any further verification in this regard.

iii) As regards loans from the other four parties, the assessee had filed confirmation letters indicating that the parties were being assessed by ITO, Distt. VII (B) Delhi. However, there is nothing on record to show that Shri Jain called for the individual files of the so-called lenders from ITO Disst. VII (B) to verify the genuineness of these loans. Thus the genuineness of these loans was accepted without making any such verification.

iv) The records show that the premises from which the assessee's business was being carried on belonged to the assessee. But the various papers filed on record showed that the office address shown by a company M/s. Synthetic Inter-Dyechem Pvt. Ltd. and one more concern was also the same as that of the assessee. Though the assessee had paid interest amounting to Rs. 68,750/- and Rs. 14,315/- respectively on the amounts borrowed from these two concerns, yet the assessee did not apparently charge/recover any rent for its premises being used by the two concerns. Shri Jain did not make any inquiry why no rent was being charged by the assessee from these two concerns.

v) The confirmations filed in respect of loans from two parties showed their Registered Office in the same premises as that of the assessee. Even their telephone numbers were the same. The records, however, do not show how the expenses for telephones and other establishments were being shared among the various concerns. It is also not known whether the expenses on these items were debited in the individual books of accounts of the three concerns or whether these were being borne by the assessee alone. It was also necessary to find out the relationship between these concerns and to examine the disallowances, if any required

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to be made u/s 40A (2a/2b). As per provisions of section 40 A (2a/2b) if the assessee incurs any expenditure in respect of which payment has been made to close relations and the assessing officer is of the view that such expenditure is excessive having regard to business needs or the market value of goods, services etc., the excess expenditure may be disallowed by the assessing officer. Considering the close relationship among the three concerns, Shri Jain was expected to make such inquiry before completing the assessment. However, no such inquiry was made.

vi) The case records show that Shri B.R. Nayar, the Husband of the assessee was an employee of the assessee, to whom annual salary of Rs. 80,000/- was being paid. The salary paid to the husband was brought back in the books of the assessee in the form of loans on which interest was being paid. Similarly Shri G.P. Nayar, another close relation of the assessee was also shown as an employee. He was also being paid salary by the assessee. The records do not show that Shri Jain made any inquiry to find out whether the salary paid to both Shri B.R. Nayar and Shri G.P. Nayar was reasonable having regards to the business needs and their qualifications.

vii. Since the turnover of the assessee exceeded Rs. 40 lakhs, the assessee was liable to furnish a compulsory audit report u/s 44AB of the Act. The records do not show that such report was in fact furnished by the assessee. Shri Jain did not examine this aspect and did not initiate penalty proceedings u/s 271 B of the IT act for this failure.

5. The facts mentioned above show that Shri Jain completed the assessment in this case in a negligent and careless manner.

III M/S. SANGAM IRON AND STEEL CO

ASSESSMENT YEAR 1985-86

6. In this case, the assessee filed return of income for the assessment year 1985-86 on 13.1.1986 declaring therein income of Rs. 1,44,656/-. Shri Jain completed the assessment u/s. 143(3) on 11.3.1986 on total income of Rs. 1,50,000/-.

(Signature)

to be made u/s 40A (2a-2b). As per provisions of section 40 A (2a/2b) if the assessee incurs any expenditure in respect of which payment has been made to close relations and the assessing officer is of the view that such expenditure is excessive having regard to business needs or the market value of goods, services etc., the excess expenditure may be disallowed by the assessing officer. Considering the close relationship among the three concerns, Shri Jain was expected to make such inquiry before completing the assessment. However no such inquiry was made.

vi. The case records show that Shri B. R. Nayar, the husband of the assessee was an employee of the assessee, to whom annual salary of Rs.80,000/- was being paid. Similarly Shri G.P. Nayar, another close relation of the assessee was also shown as an employee. He was also being paid salary by the assessee. The records do not show that Shri Jain made any inquiry to find out whether the salary paid to both Shri B.R. Nayar and Shri G.P. Nayar was reasonable having regards to the business needs and their qualifications.

vii. Since the turnover of the assessee exceeded Rs. 40 lakhs, the assessee was liable to furnish a compulsory audit report u/s 44 AB of the Act. The records do not show that such report was in fact furnished by the assessee. Shri Jain did not examine this aspect and did not initiate penalty proceedings u/s 271 B of the IT Act for this failure.

5. The facts mentioned above show that Shri Jain completed the assessment in this case in a negligent and careless manner.

III. M/s. SANGAM IRON AND STEEL CO.

ASSESSMENT YEAR 1985-86

6. In this case, the assessee failed return of income for the assessment year 1985-86 on 13.1.1986 declaring therein income of Rs. 1,44,656/-. Shri Jain completed the assessment u/s. 143(3) on 11.3.1986 on total income of Rs. 1,50,000/-.

i) In the accounting year under reference, the constitution of the firm had undergone a change. One Shri Roop Kumar Dua, outgoing partner agreed

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to transfer the credit balance of Rs. 2,22,975/- in his capital account to his brother Shri Surinder Kumar, the incoming partner. This was claimed to be provided by the deed of retirement of the outgoing partner. However, the papers on record do not show whether the capital balance of Rs. 2,22,975/- transferred by the outgoing partner to the incoming partner was a loan or gift. Shri Jain neither obtained a copy of the retirement deed nor made any verification to find out whether the capital balance transferred by outgoing partner to the incoming partner was a gift or loan. He did not examine the case for the purpose of initiating Gift tax proceedings, if the amount transferred was a gift.

ii. In this case, the compulsory audit u/s 44 AB was not completed by the due date. There is nothing on record to show that the delay in completion of the audit was on account of some genuine reason. Shri Jain did not obtain any explanation from the assessee for the delay in completion of the audit. The ITO neither initiated penalty proceedings u/s 271 B nor recorded any office note why such proceedings were not initiated.

iii. The order sheet entries show that the case was heard on 4.3.1986. On this date, the assessee was asked to file details and confirmations in respect of fresh trade creditors above Rs. 10,000/- each. The assessee did not file these details. No confirmations were also filed. However, Shri Jain completed the assessment without insisting on these details.

7. The above mentioned facts show that the assessment was completed by Shri Jain in a careless and negligent manner and also in unseemly haste without examining the issues involved and without obtaining the requisite details called for on the earlier date.

IV. HEMANT PLASTICS

ASSESSMENT YEAR 1985-86

8. The assessee filed the return for the assessment year 1985-86 on 27.9.1985 declaring therein income of Rs. 1,42,906/-. Shri Jain completed the assessment u/s. 143(3) on 28.2.1986 on total income of Rs. 1,44,310/-.

i) The asset side of the balance sheet of the assessee for the accounting year under reference indicated advances for purchase of land amounting to Rs. 2,09,774/-. The

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details regarding the dates on which investment in the land were made and the source of investment are not on record. The balance sheet also indicated increase in investment in the building, from Rs. 1,48,772/- to Rs. 2,54,034/-. Shri Jain did not obtain the details regarding the fresh investments made in the buildings and the source thereof. He did not also examine whether the cost of investment in the land and building shown by the assessee was understated or correct.

ii. During the accounting year under reference, the assessee had returned the loan of Rs. 14.54 lakhs to Dena Bank. However, the records do not show that Shri Jain made any verification with regard to the source of repayment of loan amounting to Rs. 14,53,164/-. Besides during the accounting year under reference, the assessee had taken a loan of Rs. 3 lakhs from M/s. Manju Investment Ltd. and also returned it during the year of accounting itself. Shri Jain made no inquiry to find out whether the loan was genuine. Further, he also made no inquiry to find out the source of repayment of loan of Rs. 3 lakhs to M/s. Manju Investment Ltd.

iii. In the accounting year under reference, unsecured loans had gone up from Rs. 6,09,177/- during the earlier year to Rs. 12,03,847/-. The copies of accounts filed in respect of some loans indicated that parties concerned had not confirmed such loans. The ITO was required to examine the source and genuineness of such loans before completing the assessment. Similar inquiry was also called for in the case of sundry creditors. However, the records show that even the complete address of such parties were not obtained, before assessment was completed.

9. The facts mentioned above show that Shri Jain completed the assessment in the above case in a careless and negligent manner.

v. M/S. PUNJAB FLOUR MILLS

ASSESSMENT YEAR 1983-84

10. In this case, the assessee filed return for the assessment year 1983-84 on 27.6.1983 declaring therein a loss of Rs. 4,79,850/. Shri Jain completed the assessment u/s. 143(3) on 5.3.1986 determining a loss of Rs. 4,22,562/-.

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i) In the accounting year under reference, the assessee raised fresh loans which, alongwith interest, amounted to Rs. 14.83 lakhs. The assessee paid interest of Rs. 1,41,014/- on the fresh loans. During the course of assessment proceedings, the assessee filed confirmations from the creditors to prove the genuiness of these loans. The confirmations filed by the assess were accepted by Shri Jain without making any further inquiries in regard to the source and the credit worthiness of the creditors with a view to finding out whether such loans were genuine or not. Since the amounts shown as loans taken from some of the parties varied from 1,03,000/- to Rs. 4,90,000/-, it was necessary on Shri Jain's part to have made proper verification before accepting these loans as genuine. However, no such verification was made.

ii. In the accounting year under reference, the assessee claimed electricity consumption expenses of Rs. 2,57,337/- (which included expenses of Rs. 57,000/- for the period when the factory was not working). The records also indicated that four partners were occupying four flats in the factory premises and were therefore apparently enjoying free electricity facility provided by the assessee firm. In the earlier years, i.e. the assessment year 1982-83 and 1983-84, Shri Jain's predecessor had disallowed the entire electricity expenses relating to the period when the factor was not working. On appeal, the AAC deleted part of the disallowances of electricity expenses against which the Department had filed appeals to ITAT. These appeals were still pending when Shri Jain finalised assessment for the assessment year 1983-84. Thus considering the facts of the case and the past history, Shri Jain was required to disallow atleast the electricity expenses of Rs.57,000/- pertaining to the period when the factory was not working. However, Shri Jain disallowed a paltry sum of Rs.6,000/- on ad hoc basis, one of the total claim in this regard.

iii. The profit and loss account showed a debit of Rs. 18,643/- on account of house tax. The bill for house-hold tax was payable at the end of the accounting year. The house tax should have been allowed only if the same was actually paid in view of the provisions of Section 43B of the Income Tax Act. However,

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Shri Jain allowed the entire amount of Rs. 18,643/- without verifying whether the assessee had actually paid the house tax during the year of account.

iv. The capital accounts of the partners did not show any withdrawal for house-hold expenses. Shri Jain did not verify as to the source from which the house-hold expenses were made by the partners.

11. The facts stated above show that Shri Jain completed the assessment in this case in a careless manner without examining the various issues referred to above.

12. The discussion in the preceding paragraphs shows that the various assessments referred to above were completed by Shri N.K. Jain in a careless and negligent manner, without carrying out even the minimum required verification although

- i) the assessments were completed u/s 143(3)
- ii) these were important cases from the point of view of revenue, and
- iii) Shri Jain had put in service of 18 years or more as as Income tax officer when he completed these assessments.

13. The aforesaid circumstances show that Shri N.K. Jain failed to maintain devotion to duty and thereby contravened the provisions of Rule 3(i)(ii) of the Central Civil Services (Conduct) Rules, 1964.

14. The applicant submitted his detailed explanation to the chargesheet on 8.2.1990. In this explanation the applicant met with all the points raised in the Statement of Imputations highlighting that the assessments were made by him ~~regularly~~ with due care in a judicious manner without ~~any negligence or loss of revenue and~~ ^{that} as the decisions were taken by him in discharge of his quasi judicial functions as an Income Tax Officer any departmental action against him was not called for. In the meanwhile in December 1989 a Departmental Promotion Committee met for consideration of Assistant Commissioner's who were within the zone of consideration for promotion as Deputy Commissioners. On the recommendations of the above Departmental Promotion Committee by order dated 27.12.1989, 79 Assistant Commissioners were promoted as Deputy Commissioners. As the applicant's name did not figure in the promotion list on enquiry he came to know the recommendations of the Departmental Promotion Committee in his case was put in a sealed cover. Therefore, another Departmental Promotion Committee was held in February 1991 as a result of which several persons juniors to the applicant were promoted. The applicant presumed that the recommendations of the Departmental Promotion Committee in his case was ^{again} ~~placed~~ in a sealed cover. Though the applicant had submitted detailed explanation to the Memo of Charge as early as on 8.2.1990 no final order was passed. Finding that his case for promotion was not duly considered, ~~that~~ the disciplinary authority without due application of mind

issued the chargesheet against him in regard to actions taken by him in discharge of quasi judicial functions and that the matter was unduly delayed with the result he would continue as Assistant Commissioner when his juniors were promoted to higher post, the applicant has filed this application. According to the applicant as there is no allegation of corruption or dishonesty that he had shown undue favour to anybody or that his decisions has resulted in any loss of revenue the action of the respondents in taking disciplinary action against him he is vitiates by arbitrariness non application of mind and legal malafidies. The applicant has further contended that for the acts done by him in due discharge of quasi judicial functions, he cannot be subjected to disciplinary proceedings, and that if the authorities were of the opinion that his decisions were wrong the proper course open for them is to cancel the assessments taking recourse to Section 186, 187 and 263 of the Income Tax Act.

15. The respondents in their reply contended that the impugned Memo of Charges was issued to the applicant as it was found that the assessments in question were completed by him irregularly and negligently and that in such cases disciplinary action is permissible. They have stated that the recommendations of the Departmental Promotion Committee in the case ^{of the applicant} had to be kept in sealed cover pending finalisation of the disciplinary proceedings in accordance with the rules and instructions in that behalf. The respondents have also contended that has the explanation submitted

by the applicant to the Memo of Charges is under consideration of the competent authority the applicant is not entitled to impugned Memo of charge. The respondents have prayed that the application which is devoid of merit may be disposed of.

16. The applicant filed a rejoinder in which he reiterated the contentions raised in the Original Application.

17. We have carefully gone through the pleadings and the other material on record and have also heard the arguments of Shri M.L. Chri, learned counsel for the applicant and Shri R.S. Aggarwal, learned counsel for the respondents. The learned counsel for the applicant argued that all the charges against the applicant relate to his actions as a quasi-judicial authority in completing the assessments and therefore he cannot be subjected to any disciplinary proceedings in respect of such action. On this point he referred to the decision of the Supreme Court in V.D. Trivedi Vs. Union of India reported in 1993 SCC (Labour and Services) 324. In Trivedi's case, the Commissioner for Departmental Inquiries in his report had ultimately come to the conclusion that the charges framed against the appellant before the Supreme Court had not been proved, and it was in that context that it was also observed as under "we are of the view that the action taken by the appellant was quasi-judicial and should not be formed the basis of the departmental disciplinary action." This observation made to butress the ultimate conclusion cannot be considered

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as laying down the law that no disciplinary action with his actions at all could be taken against an officer in connections in exercise of quasi judicial function." The question whether departmental disciplinary action can be taken against an officer in matters pertaining to quasi judicial functions was considered by the Supreme Court in S. Govinda Menon Vs. Union of India. In that case it was contended that no disciplinary proceeding could be taken against the appellant for his actions in connection with the discharge of his quasi judicial functions as Commissioner under Madras Hindu Religious and Charitable Endowments Act, 1951, as such action could be challenged only as provided for under the Act. This argument was rejected by the Apex Court. It was observed as under:

"... The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of Section 29 and the rules thereunder in sanctioning the leases. On behalf of the respondents it was argued both by Mr. Sarjoo Prasad and Mr. Bindra that the Commissioner was not discharging quasi-judicial functions in sanctioning leases under Section 29 of the Act, but we shall proceed on the assumption that the Commissioner was performing quasi-judicial functions in granting leases under Section 29 of the Act. Even upon that assumption we are satisfied that the Government was entitled to institute disciplinary proceedings if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty. It is true that if the provisions of 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 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

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

18. This question was again considered by the Apex Court in Union of India and another Vs. R.K. Desai, 1993 SCC (L&S) 318 wherein it was observed as follows:

".....it is not as if an officer belonging to the Central Civil Service is totally immune from disciplinary proceedings wherever he discharges quasi judicial or judicial functions. If in the discharge of such functions he takes any action pursuant to a corrupt motive or an improper motive to oblige someone or takes revenge on someone, in such a case it is not as if no disciplinary proceedings can be taken at all. On the contrary, merely because he gives a judicial or quasi judicial decision which is erroneous or even palpably erroneous no disciplinary proceedings would lie."

Again in Union of India Vs. A.N. Saxena 1992 SCC (L&S) 861 the Supreme Court observed as follows:

"In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct."

In Union of India and others Vs. K.K. Dhawan
1993 SSC (L&S) 325, the Supreme Court held as
follows:

"28. Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or reckless or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessment may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) If he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

29. The instances above catalogued are exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

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In a more recent ruling of the Supreme Court in Union of India and others vs. Upendra Singh (SC), the following observations were made:

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath and Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principles thus: (SCC p.317, para8).

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgement not only on the correctness of the decision making process but also on the correctness of the decision itself."

19.. What emerges from the above authorities is that a departmental disciplinary proceeding can be initiated against an officer in regard to actions taken by him in discharge of his judicial or quasi judicial functions if the officer has acted recklessly negligently or with dishonest motives. Therefore, the arguments of the learned counsel for the applicant that no disciplinary proceedings can be taken against an officer for his actions in connection with discharge of quasi-judicial functions at all is not tenable.

20. Having said so we shall now consider whether the circumstances of this case justified taking action against the applicant under Rule 16 of the CCS(CCA) Rules. The learned counsel for the applicant argued that as an Income Tax Officer the applicant had to take impartial and objective decisions for or against the assessee and that if disciplinary actions are taken for minor and trivial omissions which do not spell out in dishonesty or culpability the officer concerned would be inhibited in the discharge of his quasi-judicial functions and that as none of the imputations against the applicant even remotely suggests that he was led by any oblique or dishonest motive or that he was guilty of culpable negligence which resulted in any loss of revenue, the impugned action against him is wholly unjustified. A careful reading of

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the impugnations against the applicant contained in the Annexure to the impugned Memo, it is seen that no oblique/dishonest motive to confer any undue benefit on the assessees concerned or to have any unlawful gain for himself is attributed. There is no allegation that the applicant's actions or omissions have resulted in loss to the revenue. For example, we examine some of the imputations against the applicant. The imputations against the applicant in regard to the assessment in the case of M/s. Interport India for the Assessment Year 1984-85 are that the applicant did not take any effort to find out the actual expenses incurred by the assessee in regard to stamp paper, registration charges etc., in regard to the purchase of land from the D.D.A that he did not call for the records relating to the approval by the Reserve Bank of India for a N.R.I. partner, that while granting registration to the firm he did not verify whether Form No. 11/11A at the Dak Counter at the relevant time and that the fact as to why two partners did not debit any withdrawal for their household expenses and the third partner debited only a withdrawal of Rs. 7,462/- towards the households expenses. The applicant has in paragraph 4.3 at page 9 & 10 of the application stated that in his explanation to the imputations he had stated that the assessee had not incurred any expenditure in regards to stamp and registration during the accounting year that he had noted that the registration of the partnership was subject to the approval of the Reserve Bank of India, that he was satisfied that the Form 11/11A was filed in time and that the two partners did not make any withdrawal towards

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household expenditure as they had other income and were assessed with regard to their personal income and that the third partner was a lady who's husband was contributing towards households expenditure and that these aspects were not carefully considered before issuing the impugned memo against the applicant. Since the entire memorandum has been reproduced in paragraph one of the application, we do not consider it necessary to reproduce them separately or to deal with them separately. For us it is not necessary to decide whether there is any substance in the imputation or not. Our endeavour is only to see whether the imputations against the applicant are such that it would be in the public interest to take disciplinary action against the applicant. The applicant has narrated in details in paragraphs 4.4 and 4.5 of the application the substance of that all the imputations and he had explained them in his explanation. Apart from stating in the reply that the case of the applicant that he met all the points in the explanation and that the assessments were completed by him carefully is not correct. It has not been stated that these aspects were verified by the competent authority carefully before issuing the charge. In the reply statement filed as late as in July 1991 it has not been stated that atleast after the applicant filed his explanation to the imputation in February 1990, the details were verified. A scrutiny of the impugned memorandum as a whole would show that the imputations were to the effect that the applicant had omitted to verify certain aspects before finalising the various assessments.

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There is no allegation that the omissions resulted in any loss to the revenue or that the applicant was motivated by any dishonest intentions either to confer on any of the assessees any undue benefit or favour, or to gain anything for himself. Further in his explanation to the statement of allegations the applicant has in details explained each and every point stating that the concerned files would disclose how he had been careful in completing the assessments. The duties of the applicant as an Income Tax Officer involve quasi-judicial functions. Such an officer should have considerable moral courage for taking ~~inhibition~~ decisions without any imputations. If such officers are subjected to departmental disciplinary proceedings for minor and innocent omissions, not attributable to dishonesty and culpable negligence or recklessness they will be inhibited from taking impartial decisions without fear or favour. Therefore it is necessary to exercise great care and cautions before initiating disciplinary proceedings against an officer performing judicial or quasi-judicial functions in regard to matters relating to such functions, and taking action would be justified only if it is found that the officer was motivated by dishonest intentions or if was reckless or his conduct in performing the functions were culpably negligent. The following observations of the Supreme Court in Union of India Vs. A.N. Saxena 1992 (3) SCC 124, 1992 SCC (L&S) 861 stress the need for circumspection on the part of the competent authorities before initiating disciplinary proceedings against such officers. "It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding

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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."

21. In Union of India Vs. R.K. Desai 1993 SCC (L&S) 318 the allegations against Shri R.K. Desai an Income Tax Officer was that he issued refund vouchers to unauthorised persons contrary to the instructions of the Central Board of Direct Taxes. Their Lordships said-

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

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of an appeal or revision to have such orders set aside. In these circumstances, there is no dispute that the appeal may fail."

In this case also there is no allegation that the applicant was having any dishonest motive to oblige anybody or to benefit himself or that his conduct disclosed culpable negligence. Therefore, we are of the considered view that initiating of disciplinary proceedings against the applicant in the circumstances of the case was not at all justified. It may not be out of place to mention here that, against the interim order of stay of further proceedings pursuant to the impugned memo issued on 31.5.1991, and extended on 13.6.1991, the respondent filed a Special Leave Petition before the Supreme Court and that the same was dismissed with the following observations:

"In our view there is no substance in the Special Leave Petition. The misconduct is alleged to have been committed in the course of quasi-judicial proceedings and there is no allegation of culpability. In the facts and circumstances of the case, the Special Leave Petition is dismissed."

22. It is not in dispute that the recommendations made by the Departmental Promotion Committees in regard to the applicant regarding promotion to the post of Deputy Commissioner of Income Tax when the DPCs met during 13th to 15th December, 1989 and 20th to 22nd February 1991 were kept in sealed cover as the disciplinary proceedings were pending against him. The disciplinary proceedings said to have been pending was the one initiated by the issue of the impugned memorandum. The applicant is a senior officer. His

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juniors had been promoted. The applicant had been going on making representations for opening the sealed cover and acting on the recommendations of the DPCs. Though the applicant had submitted his explanation to the impugned memorandum in February and though the memorandum was only under Rule 16 of the CCS (CCA) Rules till 3rd May 1991 the disciplinary authority did not choose to pass a final order. His various representations for opening the sealed cover also did not receive any proper attentions. It was under the circumstances that the applicant filed the application. Even in the reply of statement no valid reason has been stated as to why a decision was not taken by the disciplinary authority on the impugned memorandum of charge till May 1991, though explanation was submitted by the applicant in February 1990. We have already held that initiation of the disciplinary action against the applicant in the circumstances of the case was unjustified. In view of our above findings the respondents are now bound to open the sealed covers and to act on the recommendations of the DPCs with effect from the appropriate date.

23. In the conspectus of the facts and circumstances we allow the application and quash the impugned memorandum dated 7.3.1989 (Annexure P2). We also direct the respondents to open the sealed covers containing the recommendations made by the DPCs in regard to the applicant's promotion to the post of Deputy Commissioner of Income Tax and to promote him to the post of Deputy Commissioner if in the recommendations of the DPC there was nothing against his promotion other than the pendency of the ^{impugned} ~~departmental~~ disciplinary proceedings, with effect from the ^{due} ~~due~~ date (i.e. the date on which his immediate juniors ~~were~~ ^{were} ~~on~~ ..

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recommended for promotion along with him by DPC, was promoted, if he is not otherwise unsuitable for such promotion, to fix his pay accordingly and to give him arrears of pay and allowances, if any, flowing from such retrospective promotion. The above directions shall be complied with by the respondents within a period of three months from the date of communication of a copy of this order. There will be no order as to costs.

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(K. Muthukumar)
Member(A)

A. V. Haridasan

(A. V. Haridasan)
Vice Chairman(J)

1-6-95

Mittal