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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1304/91.

Date of decision. 25.3.1994

THE HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (A)

THE HON'BLE SHRI B.S. HEGDE, MEMBER (JUDICIAL)

Shri S.L. Bahel,
685, Rishi Nagar,
Shakurbasti,
Delhi-34.

... Applicant

Shri
(By Advocate Jagjit Singh)

versus

1. Union of India through
Secretary,
Ministry of Finance
(Department of Revenue),
New Delhi-1.

2. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi-1.

3. Director of Income Tax (Investigation),
4th Floor, Mayur Bhawan,
New Delhi-1.

4. Chief Commissioner of Income Tax-I,
IIIrd Floor, C.R. Building,
New Delhi-2. ... Respondents

(By Advocate Sh. R.S. Aggarwal)

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THE HON'BLE SHRI B.S. HEGDE, MEMBER (JUDICIAL)

In this application the applicant has challenged
the charge-sheet framed against him dated 15.3.1989
(Annexure A-4) and also seek to quash the order dated
19.4.89 appointing an Enquiry Officer (Annexure A-6)
with all consequential benefits. He states that the

the charges against him being illegal, unconstitutional and without jurisdiction on grounds, inter-alia, that in respect of the assessments made by him as a quasi-judicial authority, he is not amenable to the disciplinary jurisdiction of the Respondents and has sought the following relief:-

"Pending determination of this application the applicant prays that this Hon'ble Court may be pleased to stay further proceeding in pursuance to charge memo. dt. 15.3.89 (Annexure A-4) respondent may further be directed not to take in consideration the issuance or the existence of the charge memo. dt. 15.3.89, and accordingly, respondents be directed to open the sealed cover containing the recommendation of D.P.C. held in March'91 and in case the recommendation of the D.P.C. in regard to the applicant for his promotion to the post of Asstt. Commissioner of Income Tax (Junior Scale) from Income Tax Officer is favourable, to give effect to the recommendations of the same and promote the applicant with effect from the date, the immediate junior of the applicant were promoted by the said D.P.C."

2. The brief facts of the case are that the applicant

joined the Income Tax Department as Upper Division Clerk on 12.11.1957 and he reached the gazetted post of Income Tax Officer Grade 'B' on 7.2.1978. He is posted as Income Tax Officer, Survey-cum-CIB V(4), New Delhi. It is stated that during his entire service career, no warning of any type regarding his work or conduct has ever been given to him nor any adverse remarks of any entry in his confidential reports has ever been recorded against him. On the other hand, he has been awarded cash prize in 1981 and 1983 for outstanding performance in the field of recovery and collection.

3. While holding the post of Income Tax Officer, he was compulsorily retired vide order dated 6.2.1987 under F.R. 56(j) which was challenged before this Tribunal in O.A. No. 260/87. The Tribunal was pleased to quash the order of 'premature retirement' passed by the Respondents with all consequential benefits. Thereafter, he was reinstated on 11.12.1987. After his reinstatement, he was again served with a memorandum (Annexure A-2) and he was asked to give his reply within 10 days of receipt of certain of the memorandum with regard to assessments made while being posted at ITO District V(4) during the period 1.6.1984 to 10.3.1986. He submitted a detailed reply

to the Respondents vide letter dated 16.12.1988 (Annexure A-3) stating that the assessment orders in all the three cases were based on material on record and were in accordance with law. Not being satisfied with the reply submitted by the applicant, after a lapse of one year of the reply, he was served with a charge memo. vide dated 15.3.89 under Rule 14 of the CCS (CCA) Rules, 1965 (Annexure A-4). The substance of the imputation of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the statement of article of charge framed against him which reads as follows :-

" Shri S.L. Bahel, while functioning as Income Tax Officer, Distt. V(4), Delhi for the period from 1.6.1984 to 4.8.85 and as Income Tax Officer Distt. V(3), Delhi for the period from 5.8.85 to 10.3.86 completed the assessments in the cases of (i) Miss Shikha Gupta (Assessment year 1982-83), (ii) Miss Sabina Gupta (Assessment year 1982-83) and (iii) M/s. Gian Sales Corporation (Assessment year 1983-84) in an irregular manner designed to unduly favour the assessees concerned. Further Shri Bahel completed assessments in all the three cases mentioned above without jurisdiction. Apparently by his above acts, Shri S.L. Bahel failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Govt. servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the

CCS (Conduct) Rules, 1964."

This is accompanied by a statement of imputation of his misconduct or misbehaviour in support of the article of charges framed against him which is reproduced below :-

"I MISS SHIKHA GUPTA (Assessment Year 1982-83)

Return of Income for the assessment year 1982-83 was filed by Shri Joginder Pall father of the assessee on behalf of his minor daughter in Sept.'82. In the return of income, the income declared included a sum of Rs.9,000/- representing winning from Punjab State Lottery and a sum of Rs. 30,000/- representing 1/3rd share of winning from Nagaland State Lottery. During the course of assessment proceedings affidavit of Shri Joginder Pall Father of the assessee was filed on 7.2.85 to the effect that Miss. Shikha Gupta had bought the lottery Tickets out of his own funds. The petitioner accepted the claim of having won the prizes from the Lotteries and completed the assessment under Section 143(3) on the same date i.e. 7.2.85. It has been alleged by the respondent that assessment has been completed without proper enquiry and without jurisdiction, as the assessee was neither residing in Delhi nor was having any source of income in Delhi and the process conferred undue favour on the assessee.

II. MISS. SABINA GUPTA (Assessment Year 1982-83)

Return of income for the assessment year 1982-83

was filed on 1.9.82 by Shri Joginder Pall Gupta Father of the assessee on behalf of his minor daughter declaring income of Rs. 47,208/- . In the return of income, the income declared included a sum of Rs. 85,000/- representing a winning from Himachal Pradesh State Lottery. During the course of assessment proceedings an affidavit of Shri Joginder Pall father of the assessee was filed on 7.2.85 to the effect that Miss. Sabina Gupta had bought Himachal Pradesh State Lottery Ticket out of her own funds. The petitioner accepted the claim of having won the prize from the lottery and completed and assessment under section 143(3) on 14.2.85. It has been alleged by the respondents that assessment had been completed without proper enquiry and without jurisdiction as the assessee was neither residing in Delhi nor was having any source of income in Delhi and in the process conferred undue favour on the assessee.

III. M/S GIAN SALES CORPORATION (Assessment Year 1983-84)

Earlier the jurisdiction over this case vested with Income Tax Officer Distt: V(4) i.e. the ward of which charge was held by the petitioner. The Commissioner of Income Tax, Delhi -IX, New Delhi transferred the jurisdiction over income/loss exceeding Rs. 1 lakh as on 1.4.83

from Dist: V(3) and V(4) to Distt: V(5) vide
notification dated 3.10.85.

The assessee filed the return of Income on 29.8.83
declaring therein income of Rs. 119186/- with the
Income Tax Officer Distt: V(4), New Delhi. The assess-
ment was completed by the applicant on 1.10.85, after
hearing the case on 16.9.85, 21.9.85 and 1.10.85.

The income was determined at Rs. 1,20,386/- as against
the returned income of Rs. 1,19,186/-. It has been
further alleged by the respondent that the declaration
in Form No. 15-A of Smt. Narinder Kaur entitled to
receive interest from the assessee firm without
deduction of Tax has been attested by an officer of Bank
of Madurai Ltd. on 8.10.85 and as such this paper could
not have been filed on 1.10.85. Therefore, if the assess-
ment order was completed after receipt of this declaration,
the order of the petitioner must have actually been passed
on 8.10.85 or thereafter. It has been alleged that there
was no justification to rush through the assessment under the
jurisdiction over the case had already been transferred.
The assessment was actually completed on or after 8.10.85
but the same was anti-dated."

4. The applicant submitted his detailed reply to the show-cause notice vide letter dated 16.12.1988 and 23.3.89 (Annexure 3 and Annexure 5) denying the allegations

5. The learned counsel for the applicant, Shri Jagdish Singh draws our attention that assessments relating to first two cases, though the CIT set aside the order of assessment under Section 263 of the Income Tax on 27.3.86. However, the assessees have filed before the Income Tax Appellate Tribunal who vide its order dated 19.6.1987 allowed both the appeals and held that the assessments could not have been treated as erroneous or prejudicial to the interest of the revenue. In so far as the third assessment is concerned, the charge is that the applicant had no justification to rush through the assessment when jurisdiction over the case has already been transferred from the applicant. He has completed the assessment on or after 8.10.85 but the same was ante-dated. The object of ante-dating the assessment order appears to be to favour the assessee, by passing the order accepting the income return by because the jurisdiction order dated 3.10.1985 by the C.I.T. the applicant's jurisdiction over the case exceeding one lakh was taken away on 3.10.1985.

6. In the light of the above, the learned counsel for the applicant further points out that there is no allegation of personal gain against the applicant and there is no allegation that he exercised his quasi-judicial functions in a dishonest or malafide manner.

The main thrust of his arguement is that all acts in connection with the assessments were performed by the applicant in the due discharge of his quasi-judicial functions as enjoined on him by law and thus the same could not be made the subject matter of the disciplinary action against him. Secondly, there is a considerable delay in initiating the departmental enquiry. Further, he contends that his actions are quasi-judicial in nature which are subject to an appeal or revision and it should not be made the cause/basis for disciplinary proceedings for the misconduct after considerable delay in framing the charges. Hence, the same, therefore, cannot form the basis of the initiation of the departmental enquiry. The quasi-judicial authority may commit an error of law or fact or commit any irregularity, even so, it would not amount to any misconduct. Therefore, he contends, that the applicant is being subjected to departmental enquiry for the action taken by him by discharging quasi-judicial functions and unless there are clear allegations or the charge of corruption or involvement in any corrupt practice for personal

gains or otherwise, the mere allegations based on surmises that the petitioner assumed jurisdiction in the cases that he passed the order without proper scrutiny and investigation cannot constitute a misconduct.

7. In this context he draws our attention to the judgment of Delhi High Court in the case of Kundan Lal v. Delhi Administration / (1976) SLR 1337 wherein the court has observed as follows :-

" It is true, whether or not the State Government, in a given case, is guilty of inordinate delay, vitiating the departmental proceedings, must necessarily depend on the facts and circumstances of case. The gap between the date of the alleged misconduct and the commencement of the enquiry by the Government has to be explained satisfactorily. The commencement of an expeditious departmental inquiry and its completion. Like expeditious disposal of a criminal case is primarily in the interest of the department and the delinquent and a mandate of Article 21 of the Constitution of India. It is expected that such disciplinary action has to be taken atleast expeditiously and not after so much unexplained delay".

8. In support of his aforesaid contention, he also relied upon decision of this Tribunal in the case of SC Gangwar v. UOI / 1993(23) ATC 277 / wherein the Tribunal

held as follows :-

" If no prima facie material is present showing recklessness or misconduct on the part of the applicant, the initiation of a departmental enquiry can never be said to be justified. If the orders are passed by an authority under the provisions of any law of the land and in exercise of the quasi-judicial functions, that authority cannot be said to have acted in a careless or negligent manner unless there is a proof that the applicant acted so during the discharge of his duties or failed to act honestly or failed to observe the conditions of the statutory provisions"

By that judgment, the charge-sheet issued against Shri Gangwar has been quashed. He also relied upon the decision of the Supreme Court in V.B. Trivedi v. UOI (Civil Appeal No. 4986-7/90) wherein the proceedings against the appellant/petitioner, V.B. Trivedi, were vacated on the ground that the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary action. The Review Petition was also dismissed.

9. Attention has also been invited by the learned employed person of the counsel for the applicant to the judgment of the Supreme

Court in UOI & Ors. v. A.N. Saxena [1992(3) SCC 124 JT=

wherein it has been 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.

It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant.

The initiation of such proceedings, it is true, is likely to shake the confidence of the public likely in the officer concerned and also if lightly taken/ to undermine his independence. Hence the need for extreme care and caution before initiation of 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"

10. On behalf of the Respondents, Shri R.S. Aggarwal, denied the contentions raised in the petition that delay, if at all, was on the making of the applicant. The Tribunal by its order dated 4.6.91 directed the respondents not to proceed with the disciplinary proceedings against the applicant in terms of charge-sheet dated 15.3.89 till 18.6.91 which has been extended from time to time till the hearing of the case; thereby the enquiry officer was handicapped in completing the enquiry proceedings. They further averred that the findings of ITAT upholding the assessment made by the applicant limited to the points raised in the appeal/petition filed by the assessees and nowhere discussed the procedural and other improprieties alleged to have been committed by the applicant while making the assessments. While denying that the misconduct of the applicant arising out of reckless acts of omission and commission cannot be made the subject matter of disciplinary action against the applicant, they further contend that quasi-judicial authorities cannot claim a blanket immunity from disciplinary action if the quasi-judicial action is of such a nature as to call into question the integrity of the authority or brings disrespect to the service. In support of their contention, they relied upon the decision of the Supreme Court in the case of S. Govinda Menon v. UOI

AIR 1967 SC 1274 " It is observed that it is not disputed that the appropriate government has power to take disciplinary proceedings against the applicant and that he could be removed from service by an order of the Central Government; but it was contended that IAS officers are governed by statutory rules that any act or omission referred to in rule 4(1) relates only to an act or omission of an officer when serving under the Government; means subject to the administrative control of the government and disciplinary proceedings should be, therefore, on the basis of the relationship of master and servant. It was argued that in exercising statutory powers, the Commissioner was not subject to the administrative control of the government and disciplinary proceedings cannot, therefore, be instituted against the applicant in respect of an act or omission committed by him in the course of his employment as Commissioner. We are unable to accept the said proposition..... It is not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the government in order that it may form the subject matter of disciplinary proceedings.... The fact is whether the act or omission has some reasonable connection with the nature and conditions of his service or whether

the act or omission has cast any reflection upon the deputation of the member of the service for integrity or devotion to duty as a public servant."

11. In the instant case Article 1 of the chargesheet states that Shri Bahel completed assessments in all the 3 cases without jurisdiction, apparently by his above acts, the applicant failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant and therefore contravene the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

12. In this connection, the learned counsel for the respondents also draws our attention to the later decision of the Supreme Court in UOI & Ors. v. K.K. Dhawan.

LT 1993 (1) SC 236 7 wherein their Lordship while reiterating the views expressed in Govinda Menon's case have again reiterated that the aforesaid case is an authority for a proposition for disciplinary proceedings could be initiated against the government servant even in regard to exercise of quasi-judicial powers etc. Therefore, they held that if there was any culpability or any allegation of taking bribe or trying to favour any party in exercise of quasi-judicial functions, then disciplinary action could be taken.

13. Relying upon the Govinda Menon's case, the Supreme

Court reiterated once again that disciplinary proceedings could be initiated against the Government servant even with regard to exercise of quasi-judicial powers provided -

(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 un-

becoming of a government servant;

(iv) if he had acted negligently or that he

omitted the prescribed conditions which are

essential for the exercise of the statutory

powers;

(v) if he had acted in order to unduly favour a

party;

(vi) if he had been actuated by corrupt motive

however small the bribe may be because Lord

Coke said long ago " though the bribe may be

small, yet the fault is great."

The court further observed that they are not concerned

with the correctness or legality of the decision of the respondents but the conduct of the respondents in discharging of the duties as an officer. The legality of the orders with reference to 9 assessments may be questioned in appeal or the revision under the Act but at the same time Government is not precluded from taking disciplinary action by violation of the Conduct Rules.

14. In addition, the learned counsel also referred to the judgment of the Principal Bench of the Tribunal in O.A.No. 1996/91 dated 16.2.1993 - C. Merwar v. UOI delivered by Hon'ble Chairman Justice Shri V.S. Malimath and in that O.A. also the petitioner had come to the Tribunal at that stage of the issuance of the Memorandum of charge. Further proceeding in the enquiry were stayed pending disposal of the main case. In that judgment it is observed as follows :-

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" We would not be justified in interfering at this stage in the disciplinary proceedings. The Supreme Court has again and again pointed out that it would not be proper to exercise jurisdiction by the Tribunal to interfere at this stage. This is not a case of clutching of the jurisdiction which the authorities do not have. This is a question wherein the merits the petitioner says that he

ie entitled to succeed. That is a matter on which a decision has to be rendered by the disciplinary authority in the disciplinary proceedings. In these circumstances, without expressing any opinion on the merits of the case, we decline to interfere at this stage. We, however, while dismissing the petition, direct the respondents in the circumstances to dispose of the disciplinary inquiry with utmost expedition."

15. We have given our anxious consideration to the arguments put forward by both the parties and perused the records carefully. As can be seen from the statement of imputation, which have been reproduced in extenso in para 3 supra, the allegation is that, without jurisdiction he assessed the three cases and in each case there were certain peculiar circumstances which needed proper consideration. We are of the view that it is not for us to consider the merit of the charges. Undoubtedly, respondents do have the jurisdiction to frame the charge. The charge is not in respect of any

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quasi-judicial proceeding as such, but is against the conduct of the applicant as revealed in the three assessments. The conduct is rendered suspect because of the alleged surrounding circumstances in which he chose to make the assessment, despite the fact, that, allegedly he has no jurisdiction. In the circumstances, it is not for us to go into the merits of the charge. That has to be considered only by the enquiry officer and the disciplinary authority. This principle has again been reiterated by the Supreme Court in the latest decision in U.O.I. v. Upendra Singh 4 S.K. Dhawan (J.T. 1993 (1) 658 S.C. 286.

16. In the instant case, the charge-sheet issued by the respondents is by no means a final order and the applicant will have ample opportunities to lead his defence during the stage of departmental enquiry at which time the applicant can press all the points taken before us to which the respondents will, no doubt, give due consideration in the disposal of the disciplinary proceedings. Even thereafter, statutory remedies are available to him under the relevant service rules as to redressal of grievances and after exhausting the same, the opportunities will be available to him to

approach the Tribunal, if so advised. Delay in completing the disciplinary proceedings, as stated earlier, was on account of interim order passed by the Tribunal, thereby the respondents have been restrained not to proceed further. Therefore, it cannot be said that the delay was on the part of the respondents.

17. In the facts and circumstances of the case, we are of the view, that no interference in the impugned memorandum dated 15.3.89 is called for at this stage. Accordingly, the application is dismissed and the interim order staying the departmental proceedings stands vacated. Since considerable time is lapsed, it is imperative on the part of the respondents to conclude the departmental proceedings as expeditiously as possible. There will be no order as to costs.

B.S. Hegde
(B.S. Hegde)

Member (J)

N.V. Krishnan
28/3/94
(N.V. Krishnan)

Vice Chairman (A)