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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1384/91

DATE OF DECISION 24.12.91

SHRI ACHAL SINGH

-- APPLICANT

VS

UNION OF INDIA & ORS.

-- RESPONDENTS

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HON'BLE SHRI D.K.CHAKRAVORTY, MEMBER (A)

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI P.B.KHURANA, COUNSEL

FOR THE RESPONDENTS

SHRI R.S.AGGARWAL, COUNSEL

1. Whether Reporters of local papers may be
allowed to see the Judgement? y

2. To be referred to the Reporter or not? fr

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

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The applicant/working as Deputy Commissioner of
In-come Tax since December, 1979. In the application
under Sec.19 of the Administrative Tribunals Act, 1985
the applicant assailed the order dated 12-6-1990 (Annexure-
A 1) of the respondents by which the penalty of censure
was imposed on the applicant. The applicant claimed the
relief to quash the impugned order (Annexure A-1).

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2. The facts of the case are that the applicant belongs to 1969 batch of Indian Revenue Service (Income-tax) and was in due course promoted as Assistant Commissioner in December, 1979 and that post is now designated as Deputy Commissioner. The applicant has been placed in non-functional selection grade w.e.f. 1-1-1986. The applicant was served with the charge memo dated 10-3-1988 (Annexure A-2) proposing to take the action against the applicant under Rule 16 of the C.C.S. (C.C.A.) Rules, 1965. The charge memo deals with the period from 15-3-1980 to 20-4-1980, 21-4-1980 to 30-4-1980, 1-5-1980 to 22-7-1981, 23-7-1981 to 23-7-1981 when the applicant was posted as Inspecting Assistant Commissioner of Income Tax (Assessment) in Delhi in Range V-F, Range-III-G, Range-IV-G and Range XI respectively. It is stated in this memo that the applicant did not carry out any proper examination ^{of} even the main issues involved and framed the assessment therein in negligent and careless manner.

The facts relate to the following cases-

| Name of the cases | Assessment year | Date of completion of Assessment | Returned Income | Assessed Income |
|---------------------------------|-----------------|----------------------------------|-----------------|-----------------|
| 1 | 2 | 3 | 4 | 5 |
| i) M/s All India Travel Service | 1979-80 | 30-6-1980 | 36,700 | 94,000 |

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| | 1 | 2 | 3 | 4 | 5 |
|---|---------|-------------|--------------------------------|--------------|---|
| ii) Smt. Raj Khosla | 1980-81 | 08-5-81 | 1,76,630 | 1,83,975 | |
| iii) Sh. Kailash Chand | 1969-70 | 09-7-81 | 2,400 (original Assessment) | 12,400 | |
| iv) M/s National Textile Corporation | 1979-80 | 22-10-82(-) | 7,99,26,580(-) | 10,77,42m855 | |
| v) M/s Jagdish Prasad Lalita Prasad Delhi | 80-81 | 16-3-1983 | 80,910 | 7,15,213 | |
| vi) M/s. Prabhulal Champalal | 1980-81 | 02-2-82 | 92,481 | 5,00,000 | |
| vii) M/s. Steel Trading Company | 1980-81 | 28-2-83 | 2,38,520 | 6,00,000 | |
| viii) M/s. United Steel & Allied Inds. | 1981-82 | 02-3-82 | 82,731 | 1,11,116 | |
| | 82-83 | | 2,98,430 | 4,13,290 | |

On the aforesaid memo of charges the applicant submitted a statement of defence (Annexure A-3). The charge against the applicant was that he contravened the provisions of Rule 3(i)(ii) of C.C.S. (Conduct) Rules, 1964. However the applicant was finally imposed the penalty of censure by the order dated 12-6-1990 which is under challenge in this application on a number of grounds. It is stated that the President did not apply his mind on various points involved in the case and so the penalty order is vitiated by non application of mind. Further the action of the

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respondents in charging the applicant in the aforesaid memo of charges is vitiated by the inordinate, unreasonable, unaccounted and the unconscionable delay in initiating the Departmental Proceedings against the applicant. The charges have been brought against the applicant in 1988 while the Departmental Proceedings relates to the quasi judicial action taken by the applicant in 1980-81. The applicant also assails the penalty order on the ground that the applicant acted in quasi judicial manner and whether quasi judicial action can be called to question in Departmental Proceedings in view of recent decisions* of various benches of this Tribunal.

3. The respondents contested the application. It is stated in the reply that the action was taken under Sec. 263 of the In-come Tax which by itself shows that the action of the applicant was pre-judicial to the State Revenue and undue benefits were given to the tax payers. The chargesheet was issued and the penalty order was passed.

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- (i) Virender A. Prasad .. Vs... Union of India ..
(1989) 8 ATC 190, Principal Bench, Delhi
 - (ii) P.L. Khandelwal ... Vs... Union of India
and others (1989) 9 ATC 509, Allahabad Bench.
 - (iii) Sudhir Chandra ... Vs... Union of India
on DA No. 1865/1989 decided on 26-4-1990.

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based on facts of the case. The disciplinary action can be resorted to for negligent and careless discharge of official functions. The penalty imposed was of censure after due advice of the U.P.S.C. and same was taken note of in the penalty order of 12-6-1990. The respondents in their reply also gave detailed answer to the various paragraphs in which the applicant has referred to certain allegations of wrongful exercise of official powers by the applicant and also certain decisions on the subject by the various benches of the C.A.T. The respondents prayed that the application be dismissed ^{being} devoid of merit.

4. We have heard the learned counsel of the parties at length and have gone through the record of the case. The learned counsel for the applicant referred to the decision given in O.A.No.509/91 on 21-10-1991 by the Principal Bench where there was a similar matter of Commissioner of Income Tax who joined Indian Revenue Service (Income Tax) in 1962 and he was also charged in Departmental Inquiry under the provisions of Rule 16 of C.C.S. (Conduct) Rules, 1965 having passed orders under Sec.132 of the Income Tax Act in a careless and negligent manner. In fact the counsel in the present case are also the same counsel in the above referred case. In that case also there was a departmental inquiry which was challenged before the Tribunal being in respect of

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certain orders passed by the applicant of that case while exercising his quasi judicial functions in accordance with the provisions of Sec.132 of the Act. In this case the authority of the Apex Court , (Govinda Menon Vs. U.O.I. A.I.R. 1967 S.C.page 1274) has been relied upon. The Hon'ble Supreme Court in this reported case held that if 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 and negligent manner unless there is proof that the applicant acted in a reckless and negligent manner 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 exercise of the statutory powers. Thus if there is no prima facie material for showing recklessness or misconduct on the part of the Commissioner in the discharge of his official duty then initiation of a departmental enquiry cannot be justified.

5. The learned counsel for the applicant also referred to the case of Shri V.D.Trivedi (Civil Appeal No.4986-87 of 1990 arising out of S.L.P.(C) No.2635-36 (1989) the Apex Court observed "as we are also of the view that the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary

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action". There is another authority of Kerala High Court in the case of C.S.Kasava (1986) Vol.176 Income Tax Reports, page 375 where it has been observed -

"Officers entrusted with quasi-judicial powers to decide issues arising between citizens and the Government should have the freedom to take independent decisions in accordance with law without threat of disciplinary action, if their decisions go against the interest of the Government. An order passed by such an Officer against the Interest of the Government must be challenged by the Government before the appellate or revisional authority. The Officer passing such order cannot be subject to disciplinary proceedings".

6. In the case of S.K.Lal referred to above, the judgement of the Tribunal in the case of Virudra Prasad (1988) A.T.C. page 190 & case of Sudhir Chandra (1990) 14 Administrative Tribunal cases, page 33, has also been referred. In the case of Virudra Prasad the Tribunal held -

"Assuming there was an error of judgement, that cannot be a valid ground to hold that the quasi-judicial authority was guilty of misconduct".

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7. In the case of Sudhir Chandra (supre) the Tribunal observed as-

"However, we would like to point out that the Supreme Court has held in the aforesaid case that there is scope for initiation of such proceedings only if there was prima facie material for showing recklessness or misconduct on the part of the officer in the discharge of his official duties".

8. Considering the above position of law we have to find out from the present case whether as per the directions of the Hon'ble Supreme Court in Govinda Menon case (supre) there is proof that the applicant has acted in reckless and negligent manner in the discharge of the duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential to exercise of the statutory powers. The respondents have charged the applicant for misconduct under Sec.3(i)(ii) of the C.C.S. (Conduct) Rules, 1964 because it is alleged that the applicant has committed irregularities in some of the cases which have been referred to para 2 above of the judgement. As regards case No.(i) of M/s. All India Travel Service was alleged to be not careful to make detailed inquiries to find out the genuineness of the source of credit which were explained as the sale proceeds of land at Patiala. The U.P.S.C. in its

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comment on a reference by the respondents soliciting advice in regard to the guilt of the applicant the Commission observed that the assessee in that case had filed confirmatory letters to establish the identity of the creditors and genuineness of the loan transactions. The applicant had taken precaution to intimate the concerned I.T.O. to take necessary action as all the three creditors from whom All India Services had shown advances were were assessed to Income Tax. Thus regarding the case No.1 the U.P.S.C. has taken the different view for both the matters relating to M/s. All India Travel Services of Rs. regarding the source of the credit ~~30,000~~ 30,000 and cash credit of Rs. 70,000 in the name of minor Master Chetan where the amount said to have been advanced in cash to the assessee on 31-8-1977.

9. In regard to the case of Smt. Raj Khosla referred to above in para 2 of the judgement, the allegations against the applicant are that he brought to tax income from the flats only for 2½ months against that of 12 months required to be brought to tax. The Commission did find that the applicant as senior officer should not have missed this aspect. However, this defect was subsequently referred by his successor to the Commissioner of Income Tax for action under Sec.263. No loss of revenue has accrued to the department as the Commissioner of Income Tax cancelled the order and the proceedings were directed

to be started de novo.

10. In regard to the third case of Kailash Chand the Commission also found that the applicant had not made any investigation which was expected of him particularly when the case was especially intursted to him. In regard to the fourth case of M/s. National Textile Corporation, he, in the assessment of the particular year allowed disallowable item of income tax payment to the tune of Rs. 6024. U.P.S.C. in their comments pointed out that such expenses in the past were also allowed by other assessing officers and applicant had himself admitted the lapse on his part. Regarding the case of Jagdish Prasad Lalita Prasad, Delhi the Commission, contrary to the observations in the memo of imputation of misconduct, observed that the charged officer did made efforts to investigate the case properly inasmuch as he detected the concealments. With regard to the case of M/s. Steel Trading Company, the Commission in its comment disagreed with the memo of imputation of misconduct in as much as the assessment was reopened by the predecessor of the applicant. In the case of M/s. Prabhulal Champalal, the Commission did find that the applicant failed to give reasons and adduce evidence in support of his estimation of income

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tax on Rs.6 lakhs. The Commission also observed that the applicant had not discharged the legal requirement in passing the assessment order because he merely referred to the appraisal report submitted by the Intelligence Wing. The Commission also rejected the contention of the applicant that the appraisal report being confidential document could not have been mentioned in the assessment order. Regarding the case of M/s. United Steel and Allied Industries the Commission observed that the applicant instead of comparing the Trading Account of assessment year 1982-83 that trading account of assessment year 82-83 he compared the same with the balance sheet of the assessment year 81-82. Commission further observed that the applicant had definitely erred in not noticing glaring discrepancy and that the lapse was rectified by his successor does not absolve him of his responsibilities. According to the applicant, therefore, the U.P.S.C. has not fully approved of conclusion of the disciplinary authority and in fact the report of the Commission is almost a report in disagreement.

11. We have heard the learned counsel for the parties at length and have gone through the record of the case. The applicant has been chargesheeted in the departmental enquiry and a memo dt. 10.3.1988 shows that the imputation of misconduct has been imputed to him at the time when he was working as Inspecting Assistant Commissioner of Income Tax (Assessment) and did not carry out any proper examination of the important issues involved and framed the assessments therein in a negligent and careless manner. The departmental enquiry is challenged by the applicant on the ground that the applicant made various assessments while exercising quasi-judicial functions in accordance with the provisions of Section 132 of the Act. The learned counsel for the applicant relied on the case of Govinda Menon Vs. UOI (AIR 1967 SC 1274). In this case, the Apex Court has observed that if there is no prima-facie material for showing recklessness or misconduct on the part of the Commissioner in the discharge of his official duties, then initiation of a departmental enquiry cannot be justified. Thus we have to examine as to what the prima-facie case is which led the respondents to initiate the enquiry under challenge. The reply of the respondents is that the assessments were made by the applicant in a reckless, negligent and careless manner. The learned counsel for the

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applicant also referred to a number of other authorities.

In the case of Shri V.B.Trivedi (Civil Appeal No.4986-87/1990 arising out of SLP No.C-2635-36/1989), the Hon'ble Supreme Court observed, "As we are also of the view that the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary action." The learned counsel for the applicant also referred to the case of Shri C.S.Kesava (1986) Vol.176 Income Tax Reports, page-375) in which Kerala High Court observed as follows :-

"Officers entrusted with quasi-judicial powers to decide issues arising between citizens and the Government should have the freedom to take independent decisions in accordance with law without threat of disciplinary action, if their decisions go against the interest of the Government. An order passed by such an Officer against the interest of the Government must be challenged by the Government before the appellate or revisional authority. The Officer passing such order cannot be subject to disciplinary proceedings."

12. Now coming to the case in hand, as many as 8 cases of assessment have been referred to in the imputation of misconduct against the applicant. These cases relate to the

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year 1979-89, 1980-81, 1981-82 and 1982-83. These have been referred to elaborately in the earlier part of this

judgement. The disciplinary authority considered the reply submitted by the applicant. The disciplinary authority in para-10 observed that the applicant completed various assessments in a careless and negligent manner, without carrying out even the minimum required investigation although (i) the assessments were completed under Section 143(3); (ii) the cases in question were important ones, especially assigned to him for the purpose of proper investigations; (iii) Shri Achal Singh has put in services of 11 years or more when he completed the assessments. The Union Public

Service Commission observed in its report as follows :-

"The Commission from perusal of the assessment conducted by him, as mentioned in the imputations, find that he did not make sufficient thorough enquiries into a number of cases which should have in normal course aroused his suspicion like the case of Shri Kailash Chand where it was established that the assessee has a history of indulging in smuggling activities. According to the Commission Shri Achal Singh did not display the thoroughness and industry expected of an officer of his level. However, they find that no mala fide or lack of integrity could be attribute to him. They also observe that there has not been any loss of Revenue to the Government."

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The Commission has not at all commented on the working of the applicant in a careless and negligent manner. The Commission only observed that the applicant did not display the thoroughness and industry expected of an officer of his level. The respondents in their reply in para-M, N & O at p-7 of the counter committed that no allegation of corruption of personal gain has been alleged against the applicant. Now coming to the ordinary meaning of the word 'Carelessness and negligence', the officer must act against the rules or the Act itself. There is no allegation that he failed to observe the guidelines directed in the rules or in the Income-Tax itself. In a recent decision in OA 509/91, the copy of which has been filed by the applicant of that case, prayed for quashing the memo dt. 15.11.1990 where the applicant was charged in a departmental enquiry under the provisions of Rule 14 of the CCS (CCA) Rules, 1965 for having passed orders under Section 130 of the Income-Tax Act in careless and negligent manner. The Bench observed that the respondents have failed to bring out any prima-facie material or showing recklessness or misconduct on the part of the applicant in passing the orders in the case.

The Bench further observed as follows :-

"If the functionaries exercising quasi-judicial functions are to live under constant fear of departmenta

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enquiry, then there is no necessity of constituting such an authority and conferring upon it such a quasi-judicial power. The quasi-judicial power is to be exercised with independence, impartiality and objectivity and to the best of its' judgement, without being deterred by the result thereof, guided of course by the parameters laid down in the Statute and following the procedure prescribed therein. Merely because the orders of the authority result in a benefit to a citizen, it will not be safe to draw an inference of conferment of undue favour, for it will jeopardize the judicial exercise of power."

13. In the imputation of misconduct referred to in the order of disciplinary authority (Annexure A-1), there is no allegation of any personal gain or monetary benefit. What has been stated by the respondents in the reply is that the applicant has acted in the grossly negligent manner in discharge of his regular and routine functions. However, the learned counsel for the respondents failed to convince as to how the findings of gross negligence and carelessness can be arrived at in a case of the type before us. In fact, the U.P.S.C. while commenting on the report of the disciplinary authority disagreed with the finding of the disciplinary authority in some

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of the cases which were subject of charge against the applicant. The applicant has clearly stated in his reply that the applicant has followed the rules and the statutory provisions of the Act and further in any manner, the practice followed by him differed from the practice which had been followed earlier by predecessors and still is continued by successors in office. The disciplinary authority has also failed to consider the various points raised by the applicant in the memo submitted to him with annexures in reply to the impugned chargesheet served on him. The order passed by the Hon'ble Supreme Court in Civil Appeal No.4986-87/1990-V.B.Trivedi Vs. UOI dt. 25.10.1990 (Annexure A-5) clearly shows that the action taken by the appellant, V.B. Trivedi was quasi-judicial and should not have formed the basis of the disciplinary action.

14. In view of the above discussion, we find that the respondents have not established at all a case of carelessness or negligence on the part of the applicant in discharge of his quasi judicial functions and as such, he cannot be proceeded with ⁱⁿ any disciplinary enquiry on that account.

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The application is, therefore, allowed and the impugned order dt. 12.6.1990 imposing the penalty of censure on the applicant is quashed and set aside. In the circumstances, the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 21/12/91