Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.2090 of 1991

11th day of February, 1994

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (Judl.)

Shri Anil Goel,
R/o E-19, Income Tax Colony,
Peddar Road,
Bombay-26. Applicant

By Advocate Shri P.P. Khurana

Versus

Union of India through

1. The Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
New Delhi. Respondents

By Advocate Shri R.S. Aggarwal

O R D E R

Shri B.S. Hegde, Member (J)

The applicant, who is now a Deputy Commissioner of Income Tax, Special Range-7, Bombay, has filed this application against the action of the respondents who have initiated major penalty proceedings under Rule 14 of the CCS(CCA) Rules, 1965 by the Memo. dated 22.10.1990 (Annex.A-1).

2. The brief facts leading to his grievance are as follows:

2.1 A Memo. dated 20.11.1986 (Annex.A-2) was issued to

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the applicant by the Chief Commissioner (Administration) and Commissioner of Income Tax, Delhi-1, calling for his explanation in regard to the lapses, irregularities and misconduct on his part, the details of which were given in that memorandum. These primarily relate to the assessment made by the applicant as I.T.O. for the years 1981-82 and 1982-83 of the assessee, Shri Vimal Nanda. Though the Memorandum refers to the assessment years 1982-83 and 1983-84, it appears that this is a mistake and what was meant was the assessment years 1981-82 and 1982-83.

2.2 The applicant filed a reply on 12.2.1987 (Annex.A-3) in which, among other things, he represented that there was no truth in the allegations and that he had no mala fide intention in completing the assessments of this assessee. He also pointed out that if there was a small error here or there, it should be condoned considering the fact that he had worked only for one year in the field of doing assessments.

2.3 Nothing was heard in the matter until a Memorandum of charges dated 22.10.1990 was issued to him, allegedly under the cover of a letter dated 10.4.1991 (Annex.1).

2.4 He sent a reply to the Memoranum of charges on 23.8.91 (Annex.A-4). Apart from contending that the disciplinary proceedings have been initiated after a long delay and that these proceedings are in respect of his functioning as a quasi-judicial authority, the applicant submitted his reply on merits, denying the allegations. In addition, he made the following allegations in paras.43 and 44 of

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is received from the Administrative Commissioner, the matter ought not to have been proceeded further, but on mere suspicion the matter was sought to be probed further and the applicant was issued a Memorandum. After the Applicant submitted his reply in February, 1987 the Directorate of Vigilance after correspondence with C.V.C. made out a case for major penalty proceedings against the applicant. When the proposal was put up to the Disciplinary Authority i.e. President for taking approval, ~~xxx~~ the Disciplinary Authority did not agree with the proposal and ordered for reconsideration at the appropriate level. It appears that the C.V.C. did not agree to the view of disciplinary authority and the matter was examined afresh at the highest level.

The applicant understands that the Member (S&T) of CBDT gave a clear finding in favour of the applicant that the Applicant had acted bonafide and could not be proceeded against departmentally. This opinion of the Member S & T found approval of the Chairman, Central Board of Direct Taxes and the Revenue Secretary. The file was thereafter put up before the Hon'ble Minister (Shri Ajit Panja) who, it is learnt, recorded a detailed investigative note exonerating the Applicant of any irregularity or lapses whatsoever and in spite of the clear finding in favour of the applicant it is disheartening and demoralising for the applicant to know that he has been proceeded against by way of disciplinary action."

This has also been taken as ground (c) in para.5 to challenge the proceedings.

2.6 In the circumstance, he has prayed that the impugned Memorandum of charges at Annex. A-1 be quashed.

3. The respondents have filed a reply on 10.1.1992. The respondents have not offered any comments on para.4(VIII) of the O.A. reproduced above except to state that the correspondence between the C.V.C. and the disciplinary authority as well as the examination of the case at various levels are confidential in nature. However, in reply to ground (c), respondents have specifically denied that the charge-sheet was issued at the instance of the C.V.C. and contended that it was issued only after the disciplinary authority was satisfied about the gravity of the misconduct committed by the applicant. This decision was taken after reconsideration of the applicant's case.

4. The application was admitted on 12.9.1991. In the normal course, it would have come up for hearing according to its turn. However, an ad interim direction was issued on the same day, directing the respondents not

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his reply which are reproduced below:-

> "43. In addition, I reliably understand that Members Staff & Training (Shri O.P. Bhardwaj and later Sh. C.S. Jain) Chairman (Shri G.N. Gupta and later Sh. A.S. Thind), Revenue Secretary (Dr. Nitish Sen Gupta), Minister of State for Finance (Shri Ajit Panja) and Finance Minister (Shri N.D. Tiwari) were fully satisfied with my reply and recorded minutes that no penalty proceedings need be initiated against me. It appears that the Central Vigilance Commission, however, insisted that major penalty proceedings should be initiated against me. I also understand that file was sent to Central Vigilance Commission more than once (at least on 3 occasions) for reconsideration. Their conclusion is unsupported by any rationale or logic. I further understand that on the basis of arbitrary stand taken by Central Vigilance Commission, the Disciplinary Authority has issued the charge sheet without justification.
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> 44. It is not out of place to mention here that the Disciplinary Authority who is the sole deciding authority for issuing the charge-sheet has substituted its own better judgement that/ the arbitrary stand taken by the Central Vigilance Commission. This in itself is violative of principles of natural justice and therefore the charge sheet is not sustainable in law."

/(sic)

2.5 As the enquiry proceedings were not dropped as requested for by him, the applicant filed this O.A. on 10.9.1991.

2.6 Besides stating the facts of the case as mentioned above and claiming that the allegations made in the charge-sheet had no substance, the applicant reiterated the allegations made in the reply that the proceedings had been initiated only on the compulsion of the Central Vigilance Commission. He has stated as follows in para.4(VIII) of the O.A.:-

> (VIII) The applicant says and submits that the matter was investigated way back in 1986 itself when the Applicant was issued a simple memo calling for his explanation in regard to the alleged irregularities and lapses and to which the Applicant had duly submitted his reply soon thereafter. The Applicant understands that even before receipt of the aforesaid memorandum received from C.I.T., Ludhiana, the Directorate of Vigilance asked for the report from the Administrative Commissioner of the Applicant who sent his report in June, 1986 completely exonerating the Applicant of any wrong doing. In normal course after the report

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to take further action in pursuance of the Annex. A-1 charge-sheet. This was being extended from time to time and the proceedings were continuing only for consideration of the interim order. On 28.9.1992, it was observed that the matter appeared to be short and, therefore, it was listed for further directions on 23.11.1992, when the learned counsel requested that the matter be heard finally as it was a short one.

5. It is in pursuance of this direction that this matter came up on 24.11.1992 when the learned counsel for the respondents had brought the records. At his request the case was adjourned. It came before us on 17.12.1993, when it was heard and reserved for orders.

6. It would be better to state the charge that has been framed against the applicant for a proper understanding of the arguments in this case. That charge enclosed to Annex. A-1 memorandum reads as follows:-

> "That the said Shri Anil Goel, while functioning as ITO, Distt. VI(I) Additional, New Delhi during the period from May, 1984 to June,1985 committed serious lapses and irregularities with a malafide intention by completing the assessments for asstt. years 1981-82 and 1982-83, in the case of Shri Vimal Kumar Nanda, in a manner which was prejudicial to the interests of the revenue and which conferred undue benefits on the assessee. Shri Goel, thereby failed to maintain absolute integrity and displayed lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rules 3(1) (i), 3(1(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964."

The statement of imputations gives the details of the charges. The imputation will become clear shortly.

7. When the matter came up before us, it became transparent that the central argument of the applicant on the basis of which it was felt earlier that the matter was a short one, is the allegation that the memorandum of charges had

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been issued only at the instance of the C.V.C. and that the disciplinary authority itself was not at all satisfied about the need to institute these disciplinary proceedings. It was, therefore, contended that the charge-sheet is ab initio void and that it is liable to be struck down on the ratio of the decision given by the Supreme Court in Nagraj Shivrao Karjaji Vs. Syndicate Bank and Another, J.T. 1991(2) S.C. 529. In the circumstance, though the application had been admitted, it was felt that the O.A. itself could be disposed of if we considered this ground made in the O.A. for final decision.

8. Though the learned counsel for the respondents had brought with him the concerned records, an affidavit had been filed by Shri K.P. Geethakrishnan, Secretary, Ministry of Finance on 9.12.1992 under Section 124 of the Indian Evidence Act, 1872 claiming that the production of the file in the Court is likely to prejudice public interest and in any case, a prayer was made that the confidentiality of the file be maintained without disclosing its contents to the applicant or his counsel. The applicant filed a detailed reply to this affidavit on 23.11.1993, contesting the claim that the disclosure would not be in public interest. Apparently, he appeared to be in possession of a number of facts concerning this case, which normally would not have been available to a person like him. He also made a number of allegations the substance of which is that, repeatedly, the disciplinary authority felt that there was no case to initiate proceedings under Rule 14 with a view to imposing a major penalty on the applicant, but that every time this was opposed by the C.V.C. and ultimately, the disciplinary authority had to

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issue the charge-sheet as decided by the C.V.C.

9. We heard the parties on the affidavit and felt that as allegations and counter allegations have been made as to the role of the C.V.C., which went to the root of the matter, it was necessary to peruse the records. The concerned records have been placed before us by the learned counsel for the respondents.

10. It would, therefore, be sufficient if we record our observations after having perused the relevant file, i.e., "Disciplinary proceedings against Shri Anil Goel, ACIT, New Delhi", bearing file No.DP(G)(639)/Vig.I/90 of the Ministry of Finance (Department of Revenue) which had earlier been numbered as Com./G(2792)Vig./85. Our observations are summarised below.

10.1 The Commissioner of Income Tax (Central) Ludhiana entertained suspicions about the persons who had paid application money for shares in M/s Ralson Chit Fund & Financiers (Pvt.) Ltd., Ludhiana. He, therefore, sent a d.o. letter on 6.6.1985 (p.2/corr.) to the C.I.T. Delhi VII with a copy to the Director of Inspection (Investigation) in Delhi, making an enquiry about the case of Shri Vimal Nanda. As this is the starting point of the enquiry against the applicant, we may see what the complaint was about. The C.I.T. Ludhiana alleged as follows:-

> "2. In the course of investigations, I had directed my ITO to visit Delhi and go through the assessment records of Shri Vimal Nanda. On contacting Shri Patyal, ITO.IV(6), Delhi, it was found out that Shri Vimal Nanda had filed returns for assessment years 1983-84 onwards with that Circle. No returns were available on records for the earlier years. The enquiries made there revealed that Shri Vimal Nanda had filed his returns for assessment years 1981-82 and 82-83 with another ITO viz. ITO.VI(1) Additional even though his actual jurisdiction existed with ITO.IV(6),Delhi.
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> 3. Since the regular ITO.VI(1) Additional, Delhi, Shri Anil Goyal was on leave, my ITO contacted Miss Malini Thadani, ITO on 20,5,85, who was holding additional charge of this Circle. Examination of the assessment records of Shri Vimal Nanda as available

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in this Circle revealed that on the returns for assessment years 1981-82 and 82-83, neither the incoming returns had been initialled by ITO nor any numbered/date stamp was appearing on them. Those returns were shown to have been filed on 30.7.84. ~~Prior to this, in his statement at Ludhiana recorded on 30.3.85.~~ Prior to this, in his statement at Ludhiana recorded on 26.3.85, Shri Vimal Nanda had specifically stated that he had not filed any returns for assessment year 1981-82. To verify this point, Return Register of Distt.VI(1) was also examined. From this Return Register, it was found that there were clear manipulations made for showing the receipt of these two returns of Shri Vimal Nanda.

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3. The interpolations in the Receipt Register proved the point that filing of returns for assessment years 1981-82 and 1982-83 by Shri Vimal Nanda was an after-thought sometime after 26th March, 1985 when the enquiries at this end in the case of M/s Ralson Chit Fund & Financiers (P) Limited were in progress. Back dated receipt of 30.7.84 was got shown on these returns. Assessments were completed by the ITO for both these assessment years on 23.3.85. Even if the return for assessment year 1981-82 is taken to have been filed on 30.7.84, it is an invalid return on which no assessment could be framed as such. Further in his assessment order for asstt. year 1982-83 though the ITO had stated that Shri Vimal Nanda had raised loans exceeding Rs.16 lacs for making investments in shares, no enquiries at all had been conducted regarding genuineness of these loans."

These allegations find place in the statement of imputations.

10.2 It is in this connection that an enquiry was made from the Commissioner of Income Tax, Delhi-VII, where the said Vimal Nanda was assessed. A report dated 23.6.86 was sent from the office of the C.I.T., Delhi-VII to the Assistant Director of Inspections (Vigilance) (p.15 corr.), by C.L. Kapoor, Income Tax Officer. It stated that the assessment for the year 1982-83 has been set aside by the order of the Commissioner of Income Tax, Delhi-V on 4.11.85. It proceeded further as follows:-

"2. The assessee, Shri Vimal Nanda, filed returns of his income for the assessment years 81-82 and

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82-83 in the office of the I.T.O., Distt.VI(1) Addl. ~~xxxxxxx~~, New Delhi. The returns were accepted at the counter because as per the address given in the returns, the I.T.O., Distt.VI(1) Addl., had jurisdiction thereon. Later, the assessments were also finalised by the I.T.O. u/s 143(3) in a routine manner as at the time of making the assessments he had no inkling that the assessee had filed his return of income for the assessment year 1983-84 in the office of the I.T.O., Distt.IV(6), New Delhi, in the charge of C.I.T.-V, New Delhi. When this fact was discovered, steps were immediately taken to have the records of the case transferred to I.T.O., Distt.IV(6), New Delhi, and he was also requested to move a proposal u/s 263 before his C.I.T. viz. C.I.T., Delhi-V, New Delhi, for the cancellation of the assessments framed by the I.T.O., Distt. VI(1) Addl., New Delhi, under a bonafide belief that the jurisdiction over the case vested in him. As stated inm para.1 above, the C.I.T., Delhi-V, New Delhi, has already cancelled the assessment for the assessment year 1982-83 and it is understood that similar action is being processed for the earlier assessment year also."

10.3 Not satisfied with this information, the Annex. A-2 Memorandum dated 20.11.1986 was issued to the applicant calling for his explanation who furnished his reply dated 12.2.1987 (Annex.A-3). This matter was then considered for further action and it is in this connection that the notes in the above file throw light on how the ultimate decision was taken. On 29.8.1987, the Director (Vig.) suggested that simultaneous major penalty proceedings may be initiated against the applicant and two other Clerks for the misconduct noticed on their part in this case and that the case might be sent to the C.V.C. for advice after this proposal was approved. This proposal was approved by the Member (S&T) on 31.8.1987 and sent to the Dir.(Vig.) who sent it to his counterpart in the C.V.C. (p.75/N).

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10.4 The Vigilance Commission agreed with this view of the Department and also recommended that the applicant should be suspended. It also indicated that Ms. Vijaylakshmi Sharma, Commissioner for Departmental Enquiries, would be appointed as the Enquiry Officer (p.76/N).

10.5 At about this time, a representation of the applicant's mother was forwarded to the Finance Minister by a Member of Parliament. It may be mentioned here itself that from time to time, Members of Parliament have been requesting the Finance Minister not to proceed departmentally against the applicant as would be shown presently. The full facts of the case as mentioned above, were put up to the Finance Minister with a draft reply to the M.P. stating that the decision to initiate major penalty proceedings against the applicant did not call for reconsideration. This was approved by the Finance Minister on 20.11.1987 (p.82/N). It has to be pointed out that as on this date, such a decision had not yet been taken at the level of the Finance Minister. That decision was taken subsequenty in February, 1988 and it will be referred to shortly.

10.6 Another M.P. gave a note to the Finance Minister on 24.11.1987 (p.83/N). This was examined and a note put up to the Finance Minister suggesting that approval be given for initiating major penalty proceedings against the applicant and that the advice of the C.V.C. regarding suspension could be considered separately. The Finance Minister wanted to know whether

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there were any extenuating circumstances to prevent suspension (p.88/N). The Director (Vig.) submitted that the C.V.C. had not given any reason for his recommendation and that Shri Goel be placed under suspension (p.90/N). He pointed out that the charges were serious and if established, it was not unlikely that it might lead to dismissal, removal or compulsory retirement of the applicant. A decision had to be taken on this basis. It was further pointed out by Shri O.P. Bharadwaj, Member (S&T) on 18.2.1988 (p.92/N) that if the CVC's recommendation was not accepted, he would include this case in his annual report to Parliament. However, his advice should be accepted unless the Department had strong reasons to differ from him. He also pointed out that there were no extenuating or mitigating circumstances to differ from the opinion of the C.V.C. and recommended that the applicant be suspended and major penalty proceedings be initiated. It was suggested that reply to the M.P. could be sent on this basis. This proposal was approved by the Finance Minister on 26.2.1988 (p.92/N). The note dated 27.2.88 of the P.S. to the Finance Minister indicated that F.M. was reconsidering the matter. On 9.3.1988, Joint Secretary (Admn.) informed the Director of Investigation (Vig.) that the Finance Minister had desired that this case required reconsideration and that further action be stayed (p.93/N).

10.7 Again, the case was examined. Shri Ajit Panja, the Minister of State for Revenue pointed out that in view of the notes justifying the action and in the interest of discipline, orders already

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approved by the F.M. were correct and need not be changed (p.96/N).

10.8 However, it appears that the Finance Minister discussed with the Minister of State and desired that the case be sent for reconsideration of the C.V.C. (p.96/N). In this connection, the Secretary (Revenue) pointed out (p.100/N) that after the C.V.C. gave its recommendations, there has not been any change in the materials relating to the case and, therefore, it would be difficult to get a different opinion from the C.V.C. on the basis of the same facts. The Finance Minister wanted the views of the Finance Secretary, who was not incharge of the Department of Revenue, under whom the applicant was working. He opined that as the suggestion made by the Finance Minister was only to seek reconsideration by the C.V.C. and as the Ministry was not ruling out the possibility of accepting CVC's findings subsequently, the C.V.C. could be approached for reconsideration(p.100/N).

10.9 On approval of this proposal by the Finance Minister on 11.5.1988, the file was sent to the C.V.C.

10.10 On 28.10.198 (p.105/N), the C.V.C. reconsidered the matter but reiterated the earlier advice for initiating major penalty proceedings against the applicant. As regards suspension, the C.V.C. felt that as the applicant had been transferred to the innocuous post, there was no need for suspension.

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11. When this file was to be submitted to the F.M. for final approval, an unsigned note, which was probably given to the Finance Minister, was directed to be examined. This marks the turning point of the case. That note was examined point-wise and the Director (Investigation) felt that the major penalty proceedings appeared to be just-fied. The Member (S&T), Shri O.P. Bharadwaj (referred to in 10.6 supra) raised a few queries (p.118/N) and sought specific replies thereto. After receipt of the replies, he recorded a detailed note on 1.12.1988 (p.121-124/N) pointing out that certain relevant facts which were in favour of the applicant, had not been brought out in the earlier notes prepared by the Director of Investigation (Vig.) on the earlier occasions. He pointed out that the assessing authority, i.e., the applicant, did not probe into the matter of raising of loan of Rs.16 lakh by the assessee, Vimal Nanda, from certain parties in Calcutta, because the assessee had furnished affidavits from the alleged creditors which also mentioned their Permanent Assessment number GIR. This induced the applicant, who had only one year field experience to believe that it was not necessary to make further enquiries for verifying the correct-ness of the transactions. Further, after completing the assessment, the assessing authority had written on 6.6.1985 itself to the income-tax authorities at Calcutta for verification and confirmation of the transactions, i.e., before the Memorandum from

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the C.I.T., Ludhiana was received. He also held that there was no evidence to establish that the clerical staff made interpolations in the registers on the directions or in complicity with the applicant. Further, the charges relate to only one case. He, therefore, opined as follows:-

> "13. It is a well-settled principle of law that in punitive matters, when two views are possible, the benefit of doubt should be given to the alleged defaulter or offender.
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> 14. In view of the foregoing discussion, I do not see any objection in accepting the main request made in the unsigned Note under consideration that the case may be sent to the C.V.C. for reconsideration of the question whether the case of Shri Goel is fit for initiating major penalty proceedings or minor penalty proceedings only."

12. We mention these facts, not with a view to examining the case on merits, but only to show that a Member of the C.B.D.T. now held a totally different view on the basis of specific reasons. This view was endorsed by the Chairman of the C.B.D.T. Shri Ajit Panja, the minister of State, who had earlier opined (para.10.7) that the Finance Minister should not change the decision already taken in the case to start proceedings, was now convinced on 5.12.1988 after perusal of these detailed notes, that the Office had not dealt with the case in the past with the seriousness it deserved. He agreed with the recommendations of the Member (S&T) as endorsed by the Chairman, CBDT and felt that no strong case is made out for initiation of even minor (sic) disciplinary proceedings against Shri Goel (p.125/N).

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13. Therefore, the matter was again referred to the C.V.C. who recorded its views on 31.1.1989 again reiterating the earlier recommendations. The CVC's note has mainly drawn attention to the earlier stand of the C.B.D.T. when they sent the proposal for initiating the departmental enquiry (para.10.3 and 10.6). The points raised by the C.B.D.T. in the latest note were examined but it did not agree with these views. It was stated that the Commission had seen the case twice and two Central Vigilance Commissioners have also seen the case. They felt that the full truth will come out only during the regular departmental enquiry proceedings.

14. This note was put up by the Director (Vig.) on 1.2.1989. The Chairman, C.B.D.T. - an officer who had not seen the case earlier - raised a few queries (p.133/N and 136/N) and these were directed to be examined.

15. In the meanwhile, the Secretary (Revenue) who in a d.o. letter dated 31.3.1989 to the C.V.C. expressed the view that "After going through the entire case I feel that initiation of major penalty proceedings will be too harsh a decision", sought a discussion. He recorded, on 8.4.1989 (p.137/N) the following note:-

> "I discussed this case with Chief Vigilance Commissioner yesterday. He felt that taking into account all the circumstances of the case, he does not find it justifiable to agree to our porposal for proceedings under minor penalty. He is also of the opinion that the concerned officer will have ample opportunity during the proceedings to place the various extraneous circumstances

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before the inquiry officer and if he can convince those authorities, eventual action may as well take the form of minor penalty rather than major penalty. he is in favour of allowing the proposed action to proceed. In view of his definite opinion, we need not pursue this matter further. Necessary action may, therefore, be taken as advised by CVC."

16. When the Chairman, CBDT got the information, he discussed the case with the Revenue Secretary and recorded a note on 20.7.1989 (p.141/N to 144/N). He observed that the allegations against the applicant were as follows:-

"A. Tampering with the records by accepting returns and issuing notices in back dates;

B. Deliberately conducting assessments with a view to benefit the assessees to the prejudice of the revenue."

In regard to allegation 'A', he came to the following conclusions after noting the findings recorded earlier:-

"I fully endorse the above views. I, further, notice that in over-enthusiasm to link the officer with the manipulation of records, we have overlooked some common lapses committed in the Department. For instance, the DDI (Vig.) has stated (page 21/n ante) that the returns for 1981-82 and 1982-83 do not bear the initials or signatures of the ITO in token of their receipt. I find that the returns for 1983-84, 1984-85 and 1985-86 which were filed in the regular ward do not also bear the initials as a token of receipt.

Holding that the officer influenced the staff to back date the returns and notices is to stretch the imagination too far without any supporting evidence.

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Therefore, so far as the allegation of manipulation of records is concerned, there is no case against the officer. Further enquiry on this issue will be of no avail."

In regard to allegation 'B', he held the following views:-

"In fact, what has happened in this case is not very unusual. Bogus cash credits have been shown to introduce black money by the main company through a dummy (Vimal Nanda). Mr. nanda has filed a return in the wrong ward and that is the reason why he has denied before the ITO (Central), Ludhiana to have filed a return in Delhi. Thereafter, the Central Circle has found that the cash credits/ Share holders were bogus and assessee made the surrender. There is no reason why the Assessing Officer who accepted the loans at the first instance should be penalised unless his malafide is clearly established.

The assessment maybe viewed in the context that the ITO had only one year's experience and any lapse in not doing the assessment in the way expected from an experienced officer can be attributed to his inexperience.

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In fact the Department has even failed to levy penalty for concealment on Vimal Nanda. Penalty proceedings initiated in course of re-framing the assessment have been dropped because the Department believed the innocence of Vimal Nanda. If we can accept the innocence of the assessee, there is no reason why we should not treat the officer similarly.

Thus, there is nothing to indicate malafide action of the ITO and investigation into the allegation of bad assessment will not be of much use to establish anything which is already not on record."

He finally recorded as follows:-

"C. The CVC has quoted the observation of Member (S&T) in its opinion at page 127/n. The Member has revised this opinion on re-appraisal of the facts (pages 121-124/n). It is pertinent to note that the young officer has already suffered because the threat of inquiry is hanging over his head for the last four years. It is not desirable to trouble him further by initiating major penalty proceedings against him. Considering the totality of the case, a warning may be issued to the officer to be more careful in future."

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Secretary (Revenue) agreed with the Chairman and recommended that the case be referred to the C.V.C. After obtaining the approval of the Minister of State for Revenue, this was sent again to the CVC (p.145/n). The C.V.C., after detailed consideration of the points raised in the note of the C.B.D.T., reiterated its initial views that major penalty proceedings against the applicant are justified (p.146-148/n).

17. The Director Investigation (Vigilance) then put up a note to the Member (S&T) making the following observations:-

> "2. If we do not implement C.V.C.'s advice now, the C.V.C. are likely to include this case in their Annual Report to be placed before the Parliament. The C.V.C. are likely to highlight the fact that it was the Department who had proposed major penalty proceedings against the officer and then the Department had itself not chargesheeted the officer after the C.V.C. had concurred in the Department's proposal and had not acceded to the Department's requests for consideration of the C.V.C.'s advice. The Department would then be placed in an embarrassing position. In these circumstances, there appears to be no alternative now to acting upon the C.V.C.'s advice."

The Member (S&T) wanted to know what the procedure was for not accepting the CVC's advice.

18. He was advised that in accordance with the procedure laid down in the Memorandum No.118/2/78/AVD-(I) dated 9.10.1978 of the Department of Personnel & Training, two steps should be taken - (a) a second reference is to be made to the C.V.C. for reconsideration of its advice, and (b) the Department of Personnel & Training is to be consulted before taking a final decision. As reference had already

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been made thrice to the C.V.C., consultation with the Department of Personnel alone remained. Thereupon, Member(S&T) merely drew attention to the CVC's comments on 'the former Chairman's note' and recommended that "In view of these, it may be advisable to proceed against the officer as issue of charge-sheet has already been delayed by two years".

19. The new Chairman, C.B.D.T. (i.e. who succeeded the Chairman who recorded the note referred to in para. 16 supra) felt, for the detailed reasons given by him (p.153-155/n), that the C.V.C. has simply reiterated its earlier views without examining the case on the lines pointed out by his predecessor. He, then concluded as follows:-

> ".....After examining this opinion of the CVC (page 146-149N/ante) and full facts of the case, I agree with my predecessor that nothing further is likely to come out against the officer by initiating major penalty proceedings. In fact, initiation of such proceedings may demoralise the officer. As suggested by my predecessor, it is not desirable to initiate major penalty proceedings against him and a simple warning may be issued to the officer to be more careful in future.
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> 9. Therefore, in this case the Department should disagree with the advice of the CVC for initiating major penalty proceedings." (emphasis ours)

It was pointed out that, in the circumstances, the Department of Personnel would have to be consulted for which a note would be prepared.

20. This conclusion and recommendation was approved by the Secretary (Revenue) and, accordingly, a detailed note (p.156-167/N) prepared by the Dy. Dir. Investigation (Vigilance) and approved by

the Chairman, C.B.D.T. and the Revenue Secretary was sent to the Secretary(Personnel) on 24.11.1989. Para. 12 of that note reads as follows:-

> "12. In view of the totality of the facts and circumstances discussed in this note, two successive Chairmen of the C.B.D.T. strongly feel that if the accepted procedure followed in the Department in making hundreds of assessments in a year by an assessing officer in a non-scrutiny charge is properly appreciated, then it would be clear that in the present case an officer with just over a year's experience in the field cannot on facts, be held guilty of deliberate misconduct in respect of the one case under consideration and liable to be charge-sheeted for that. In this view the two Chairmen have also been supported by the Secretary (Revenue) and Minister of State (Revenue). It has been proposed that in view of the deficiencies in the assessment of one case made by the ITO, Shri Goel, who had then only a year's experience in the field, it would be enough if a simple warning is given to him to be more careful in future. To that extent it is proposed not to accept the CVC's advice."(emphasis ours)

21. The Department of Personnel gave the following advice:-

> "The case was examined in the Department of Personnel. In view of the repeated advice of the CVC, the Department of Revenue is advised to accept the views of CVC and allow the proceedings to be initiated. The true facts will emerge during the inquiry and the officer will have ample opportunity to prove his innocence.
>
> Secretary (P) has seen and concurred."

22. On the receipt of this note, the Member (S&T) suggested that, as the Department of Personnel has concurred in the views of the C.V.C., the CVC's advice to initiate major penalty proceedings against the applicant may be accepted. This was approved by the Chairman, C.B.D.T. and the Secretary (Revenue)

on 2.3.1990.

23. A short self-contained note was then prepared for obtaining the approval of the Finance Minister for initiation of disciplinary proceedings against the applicant. That note also referred to yet another unsigned note given to the Finance Minister with the request that, as the officer has already suffered for five years, due to difference of opinion among different departments, Finance Minister might like to ask the Department of Personnel to reconsider the case. Specific attention of the Finance Minister was drawn to this unsigned note. After discussions with the Secretary (Revenue), the Finance Minister agreed on 4.6.1990 to give notice for disciplinary proceedings to the applicant.

24. We have given a summary of how the case was considered by the Ministry of Finance as we have found this necessary to decide the issue raised by the applicant, viz., that the decision to initiate disciplinary proceedings under Rule 14 with a view to imposing a major penalty, was not voluntary but was imposed by the C.V.C. This allegation could not have been inquired into by the Inquiry Officer, who is only a delegatee of the Disciplinary Authority. He does not have the authority to enquire into the validity of the charges, if it is questioned on any ground. He has been given the limited authority to only inquire into the charges which have been denied

....

by the delinquent Government employee. In other words, the validity and competence of the charges have to be taken for granted by him and cannot be questioned before him. Hence, when the validity, competence or vires of charges framed in a disciplinary proceedings are challenged and the disciplinary authority resists it, the Tribunal alone can adjudicate upon the issue.

The question is whether the original record of the Government confirms or contradicts the assertion and contentionm of the applicant that the decision to institute proceedings under Rule 14 is not voluntary and has been forced upon Respondent No.1 by the C.V.C.

25. It is quite clear that a number of interested persons, including Members of Parliament, have pleaded with the Finance Minister on behalf of the applicant. In fact,the detailed examination of the case

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in the C.B.D.T. took place only when the first unsigned note received by the Finance Minister was taken up for examination (para. 11 supra). It was then found that, perhaps the charge against the applicant may have to be viewed differently. In the first instance, such a detailed examination was made by Shri O.P. Bharadwaj, Member (S&T), who came to the conclusion that considering all the circumstances, including the steps taken by the applicant to protect the interests of revenue, action for imposing major penalty was unjustified and if at all, only a minor penalty is called for. The Minister of State, however, felt that even a minor penalty was not justified. When this was not accepted by the C.V.C., the Chairman, C.B.D.T., took up the matter for reconsideration. He felt that there was no case, whatsoever, for holding a departmental enquiry against kthe applicant. When this view was also not acceptable to the C.V.C., another Chairman felt that the CVC's advice should not be accepted and it would be enough if a simple warning was given to the applicant and he proposed communication with the Deptt. of Personnel. It is thus clear that every time the matter was referred to the C.V.C., it rejected the considered view of the Department.

26. In this connection, one has to consider the unenviable position of the Member(S&T) (Shri O.P. Bharadwaj). He had held in the first instance

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as follows:-

> ".....The facts as brought out in the said note show that the ITO had colluded with the assessee and members of the staff with a view to conferring very substantial and unwarranted tax benefit on the assessee. The ITO also made certain unnecessary and unwarranted observations in the assessment order with the clear intention of thwarting any possible attempt by the succeeding ITO to re-open the completed assessment. The fact that the ITO resorted to such calculated mischief so early in his career further adds to the gravity of his misconduct. In the circumstances, I do not find any extenuating or mitigating circumstances to differ from the opinion of the CVC."

On further re-examiantion, however, he had to admit as follows:-

> "7. The fact that the assessee had furnished affidavits from the alleged creditors and that these affidavits also gave the PAN/GIR Nos. of the said creditors was not brought out in the notes submitted on previous occasions by the D.I.(Vig.). In my opinion, this is a very significant fact, which may possibly have induced the I.T.O. to believe that it was not necessary for him to make further inquiries for verifying the correctness of the transactions by issuing summons to the parties. The fact that the officer was relatively inexperienced adds credibility to this view and it is not unlikely that the various infirmities in the evidence mentioned by D.I.(Vig.) may have escaped the attention of a junior and inexperienced officer."

> xxxx xxxx xxxx xxxx xxxx

> "13. It is well-settled principle of law that in punitive matters, when two views are possible, the benefit of doubt should be given to the alleged defaulter or offender.
>
> 14. In view of the foregoing discussion, I do not see any objection in accepting the main request made in the unlsigned Note under consideration that the case may be sent to the C.V.C. for consideration of the question whether the case of Shri Goel is fit for initiating major penalty proceedings or minor penaltly proceedings only."

....24..,

Obviously, this change of view was not forced on him but is born out of conviction.

27. That holds good for Shri Ajit Panja, the Minister of State also. He favoured the initiation of disciplinary proceedings. On 21.3.1988, he felt that orders already passed by Finance Minister approving the disciplinary proceedings need not be changed. But, later, when Member (S&T) recorded a note in great detail, extracts from which have been reproduced above, the Minister did not hesitate to change his views. He was fair enough to agree with his views which were endorsed by the Chairman, C.B.D.T. and agreed that C.V.C. should be requested to reconsider its views. He also felt that the case was not even fit for imposition of minor penalty.

28. We are of the view that these authorities would not have taken such a stand but for their firm conviction that the D.E. was not justified. In other words, the Department did hold very strong views that the applicant need not be charge-sheeted for imposition of major penalty.

29. It is unambiguously and abundantly clear that Department disagreed with the CVC's advice till the last. Therefore, it had to consult the Department of Personnel as required by the standing instructions. The Department of Personnel did not give any new reason of its own as to why the CVC's advice should be accepted. That Department

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did not place on the file its detailed notes considering the pros and cons of the case and the diametrically divergent views of the Department and the C.V.C. and the reasons for its conclusions. Instead, it only recommended the acceptance of the CVC's advice on the only ground that the CVC had repeated its advice more than once and that the true facts would emerge only during the enquiry and the officer would have ample opportunity to prove his innocence. In other words, the Department of Personnel did not give any convincing reason as to why the Department of Revenue should reverse its opinion about the delinquency of the applicant and the need to initiate major penalty proceedings against him. That advice should not have weighed with the respondents at all, because the thrice repeated advice of the C.V.C. had been unambiguously and finally rejected by the Department of Revenue when the Chairman, C.B.D.T. wrote a strong note - vide para.19 supra - and proposed that the Department of Personnel be consulted.

30. In our view, these circumstances show that the final decision has been taken only at the instance of the C.V.C. which insisted on a major penalty proceedings being instituted against the applicant. We could have come to a different conclusion if some official in the Board, or the Secretary (Revenue) had recorded - at least at the last stage - that the earlier observations

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made in the Department at various levels were the result of a wrong appreciation of the facts and circumstances and that the view propounded by the C.V.C. was more convincing and that it deserved to be accepted. If even a few lines expressing such a view had been written at the final stage of decision making, one could have held that, perhaps, the decision was taken independently of the CVC's advice and not under pressure. We are unable to notice any such decision on the departmental file. It appears to us that the Ministry of Finance finally opted for a decision of convenience. The alternatives before the Ministry were to reject the advice of the C.V.C. about this case /- and thereby invite a report to Parliament by the CVC which was sure to be made considering the background of the case - and take steps to defend itself in Parliament or to accept the advice of the C.V.C., notwithstanding its strong conviction in the matter and give the CVC / no cause to make a report to Parliament. The Ministry had been alerted by the Director Investigation(Vigilance) about the consequences of disagreeing with the C.V.C. (para. 17 supra). Therefore, the Ministry chose the latter alternative. We find that such a conclusion alone can be drawn from the circumstances of the case. We reject the contention of the respondents that the decision was voluntary and taken without any extraneous inference.

31. We, therefore, hold that the Ministry was afraid of disagreeing with the C.V.C. lest the

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latter should make a reference to this case in its Annual Report to the Parliament. This is not a relevant consideration for taking a decision in the matter. That decision is to be taken in accordance with the provisions of Rule 14(2) which reads as follows:-

> "(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

32. This opinion of the disciplinary authority has to be formed by himself. He is not at all feterred in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceedings which he himself is not willing to initiate.

33. That proposition is well-established by the ratio of the judgement of the Supreme Court in Nagaraj Shivarao Karjagi Vs. Syndicate Bank and Another, J.T. 1991 (2) S.C.529. That was a disciplinary proceeding conducted under the Syndicate Bank Officer Employees (Conduct) Regulations, 1976. Regulation 20 thereof provides that the Bank shall consult the Central Vigilance Commission, wherever necessary, in respect of all disciplinary cases having a vigilance angle.

However, the Ministry of Finance, Department of Economic Affairs (Banking Division), issued a directive dated 21.7.1984 which reads as follows:-

> "Recently a case has been reported where a bank has revised the punishment awarded to an officer in a disciplinary case contrary to the advice of the Central Vigilance Commission. The case has figured in the Annual Report of the CVC as a case of non-consultation with the Commission and thus created an embarassing situation. You will, perhaps, be aware of the Annual Reports of the CVC, which contain cases where the disciplinary authorities had not accepted its recommendations or had not consulted it, are laid on the Tables of both the Houses of Parliament. This may, thereafter be discussed in the Parliament also. You will agree that under no circumstances the advice of the CVC should be modified except with the prior concurrence of the Commission and this Ministry. I may mention here that revision of the penalty imposed on a delinquent officer as a result of an appeal filed by him before the appellate authority against the decision of the original disciplinary authority also amounts to non-consultation/non-acceptance of the advice of the CVC and is included in CVC's Annual Report."

34. In that case, the Bank consulted the Central Vigilance Commission which recommended the punishment of compulsory retirement from service. This penalty xxxx was imposed on the petitioner therein. The appeal of the petitioner was dismissed by the General Manager. The Bombay High Court also dismissed his petition. The Supreme Court found that the petitioner had been complaining throughout and, also before that Court, that the punishing authorities did not apply their mind and did not exercise their power in considering the merits of this case. He contended that the penalty was

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imposed in obedience to the advice of the C.V.C. which has been made binding on the Bank by the direction dated 21.7.1984 of the Ministry of Finance, extracted above.

35. The counsel for the Bank had submitted that the case of the petitioner had received the fullest consideration from the disciplinary and appellate authorities who had independently considered the material on record, both in respect of the merits of the charges and appropriate punishment. It was further contended that as the order of punishment did not specifically refer to either the advice of the C.V.C. or the circulars to the Bank drawing attention of the authorities to the directives issued by the Ministry of Finance, it could not be contended that the punishment had been vitiated by extraneous circumstances. Considering the case in the light of these submissions, the Supreme Court gave the following findings ~~xxxx~~ observations and orders:-

> "15. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt, as alleged by the petitioner and not denied by the Bank in its counter, that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advice lesser punishment to the petitioner. Apparently, those representations were not accepted by the Commission. The disciplinary authority and the appellate authority,

therefore, have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elabloration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed, they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.

16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punlishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

....31..

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. The Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted - on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in A.N. D'Silva V. Union of India ((1962) Suppl.(1) SCR 1968) has expressed the view that the Commission's function is purely advisory. It is not an apellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

xxxx xxxx xxxx xxxx xxxx

19.....The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p.309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matter."

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In the circumstances, the appeal of the petitioner was allowed.

36. The situation in the present case is similar to that obtaining in the above case, except for one significant difference, viz., that there is no directive of any Ministry to any authority that the advice of the C.V.C. should be binding, but that does not affect the case materially because we have found that till the last moment, the Department of Revenue had felt strongly that no proceedings under Rule 14 for imposing a major penalty, should be initiated against the applicant and that he should be let off with a simple warning. Yet, such a disciplinary proceeding has now been initiated. We have given our finding above that this is entirely attributable to the oft repeated advice of the C.V.C. which the respondents did not finally dare to disagree with for fear of a report being made by the C.V.C. to Parliament. We are also of the view that the ratio of the decision of the Supreme Court in the above case, Nagraj Shivarao Karjagi Vs. Syndicate Bank and Another, will also apply to initiation of disciplinary proceedings under duress or extraneous inference. In the circumstances, we allow this application and quash the impugned Annex.A-1 Memo. dated 22.10.1990 of the Department of Revenue, initiating proceedings against the applicant under Rule 14 of the C.C.S.(CCA) Rules, 1965. No costs.

(B.S. Hegde) 11/2/94
Member(J)

11/2/94
(N.V. Krishnan)
Vice-Chairman(A)

SLP