IN THE CENTRL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 2752 of 91 Date of decision 13.8.92.

S.C. Gangwar Applicant

Shri Kapil Sibbal with [redacted] and Manoj Wad Counsel for the applicant

vs. 22.8.92.

Union of India & Ors. Respondents

Shri R.S. Aggarwal Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

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

✓2. To be referred to the Reporter or not? Yes.

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal singh, Vice-Chairman (J).)

J U D G M E N T

The applicant joined the Income Tax Department on 16.7.75 as Income Tax Officer (Group 'A') (redesignated as Assistant Commissioner of Income Tax) with effect from 1.4.88). The applicant held different offices in the Income Tax Department from time to time. During the period from 18.6.82 to 20.6.83, the applicant was posted as Income Tax Officer and Assessing Authority 'A' Ward, Indore. The applicant completed assessments in respect of several assessees. The applicant contends that the orders of assessment passed by him were of quasi-judicial nature, but they are also examined in internal audit of Income Tax Department and revenue audit of Comptroller & Auditor General of India primarily with a view to satisfying that the same are not prejudicial to the interests of the revenue. He also contends that the assessments made by an

assessing authority under Section 143(3) of the Income Tax Act are subject to the provisions of appeal under Section 246 of the Act and revision under Section 263 of the Act at the instance of the assessee and also at the instance of the revenue respectively. The memorandum of chargesheet dated 26.11.90 (Annexure A-1) was served upon the applicant alongwith the article of charge and statement of imputations of misconduct. The article of charge is as below:

> "ARTICLE-1: Shri S.C. Gangwar, while functioning as I.T.O., A-Ward, Indore, during the period from 21.6.1982 to 20.6.1983, completed assessments in the cases listed in Annexure -II, without proper scrutiny and investigation and caused serious loss to revenue and corresponding undue benefit to the assessees. Thereby, Shri Gangwar failed to maintain absolute integrity, devotion to duty and exhibited a conduct of unbecoming of a government servant. Thereby Shri Gangwar violated provisions of Rule 3(1)(i) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964."

The substance of the charge framed against the applicant is that on account of his omission to make proper scrutiny and investigation in eight cases, listed in the statement of imputations of misconduct, resulted in serious loss to revenue and corresponding undue benefit to the assessees. The applicant contends in the O.A. that the allegation of loss to the revenue caused has not been indicated in the allegations because there was no reasonable basis for the alleged loss of revenue. He also contends that there is neither evidence nor allegation that the applicant by his overt act or omissions intended to confer benefits or undue advantage to the assessees. During the period between 21.6.82 to 20.6.83, according to the memorandum of chargesheet, the aplicant is alleged to have assessed the following eight cases:

1. M/s. Ferro Concrete Co. of India, Indore. (M.P.)
2. M/s. Bhagirath Brothers, Indore.
3. M/s. Prem Pharmaceuticals, Indore.
4. M/s. Indore Tyre House, Indore.
5. M/s Babulal Kanhaiyalal & Sons, Indore.
6. M/s Sampat Electronics, Indore.
7. M/s. Basant Radio & Electronics, Indore.
8. M/s. Viscus, 12/8, New Palasia, Indore.

2. After the assessment was made by the applicant, these firms preferred an appeal to the appellate authority under Section 246 of the Income-tax Act. The appellate order of M/s. Ferro Concrete Company was passed by the appellate authority,i.e., the Commissioner of Income-tax (Appeals) on 16.6.88 (Annexure F-1). This appeal was allowed with a direction to the Income Tax Officer to compute the income of the assessees after taking into account the net profit declared as the basis. The appellate order of M/s. Bhagirath Brother is dated 12.3.87 (Annexure F-2). By this order, it was observed that the assessment made by the applicant was not justified because of the additions of Rs. 46,952/- and Rs. 38,928/- for assessment years 1982-83 and 1983-84 and they were directed to be deleted. This appeal was partly allowed and the I.T.O. was directed to amend the assessment of the partners according to the directions given therein. The appellate order of M/s. Prem Pharmaceuticals is dated 27.2.86 (Annexure F-3). This appeal was also partly allowed and the Income Tax Officer was directed to take fresh decision and it was also directed that the disallowance of Rs. 25,000/- be restored to the assessees. The appellate order of M/s. Indore Tyre House is dated 31.1.86 (Annex. F-4). This appeal was also partly allowed and the assessee was given a relief of Rs. 4000/- The appeal of M/s. Babulal Kanhaiyalal & Sons was decided on 28.10.85 (Annex. F-5). This appeal was also partly allowed and the case was remitted back to act according to the directions. The appeal of M/s. Sampat Electronics was decided on 31.10.85 (Annexure F-6). This appeal was also partly allowed and the Income Tax Officer was directed to modify the assessment as directed in this order.. M/s. Basant Radio & Electronics' appeal was decided on 30.1.84 (Annex. F-7) in which addition was directed to be deleted and the appeal was partly allowed and the assessee was given the relief against the original orders. The appeal of M/s. Viscus was decided on 4.2.86 (Annex. F-8). This appeal was allowed partly and the disallowance of Rs. 3,000/- to the assessee by the Income Tax Officer was set aside.

3. Thus, according to the applicant, all the assessment orders

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passed by him during the period were considered judicially by the appellate authority and appropriate appellate orders were passed therein and in all these appellate orders, the appeals were allowed and the assessees were given reliefs by the appellate authority. Thus, there is no prima facie evidence that the applicant by his quasi-judicial order in any manner caused any loss of revenue to the department.

4. The applicant has also raised the ground in the O.A. that the assessment orders passed were of 1982-83 and the memorandum of chargesheet has been filed in the fag end of the year 1990. Thus, the respondents have chosen to initiate the departmental inquiry after a long lapse of about 7 years. The applicant / thus, contends that the subject matter has become stale and no departmental inquiry should be permitted to proceed to the detriment of his future promotion in the department. The applicant also contends that he had filed representations which still remain unanswered by the respondents.

5. The respondents on notice appeared and filed their counter in which they have raised several grounds that the irregularities were committed by the applicant; that it took Central Vigilance Commission time to submit the advice for departmental proceedings against the applicant, that the orders passed by the applicant suffer from great irregularities which cast prima facie doubt against the integrity of the applicant; that the applicant has committed gross negligence and there was adequate matter to proceed against the aplicant in the departmental inquiry. They also contend that the applicant had passed these orders in a hurry when he was under the orders of transfer which resulted in total benefit to the assessees. They took the stand that the appellate authorities normally consider only those issues which are subject matter of the appeal and hence the decision of the appellate authority in those eight cases does not detract the respondents from proceeding with the departmental inquiry. They maintain that the orders passed by the applicant have resulted in loss to the revenue; they also contend that a special vigilance inspection was conducted by the Commissioner of Income-tax, Bhopal, against the applicant. The respondents also contend that the main charges against the applicant were lack of investigation,

gross negligence and undue haste which has resulted in loss to the revenue and undue benefit to the assessees. They also maintain that Section 246 and Section 263 contain only remedial actions. They have expressed their inability to quantify the exact loss to the revenue by the assessments made by the applicant. In great detail, they have opposed this O.A. and contend that the representation of the applicant has been considered in great detail and the formal decision was taken to continue with the disciplinary proceedings. Alongwith their counter they have filed a copy of the report dated 29.7.85, addressed by the office of the Commissioner of Income-tax, Bhopal, to the Director of Income-tax (Vigilance), New Delhi.

6. The applicant has also filed a rejoinder to this counter which was taken on record.

7. The learned counsel for the applicant, Shri Kapil Sibbal with Shri Ravinder Srivastava and Shri Manoj Wad and the learned counsel for the respondents, Shri R.S. Aggarwal, appeared. They were heard on the question of the continuance of the interim order, but both the counsels urged for the decision in the O.A. at this stage. As we have heard both the sides in great detail, we proceed to decide this O.A. finally as requested by the counsels for both the sides.

8. The assessment is made by the assessing authority under the provisions of Section 143(3) of the Income Tax Act. If after the assessment order is passed and the assessee is aggrieved, he can file an appeal before the appellate authority (Depputy/Commissioner (Appeals)) under this provision and challenge therein the orders under Section 143 (3) of the Income-tax Act. This appeal can be filed when the assessee is aggrieved by the order of the assessing authority. Under this provision, the appellate authority, according to the provisions of Section246 of the Act, have wide powers to anul, modify, allow and rescind the orders passed by the assessing authority. According to the scheme of the Income Tax Act, after the stage of Section 246 is over, the provision of revision of the order which is prejudicial to the revenue can be passed under the provisions of Section 263 of the Income Tax Act. According to this provision,

the Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed by the assessing officer is erroenous in so far as it is prejudicial to the interest of the revenue .... Section 264 in this context also provides that the Commissioner may either on his own motion or on the application may exercise lhis revision powers. Thus, an assessment order under Section 143 (3) of the Act, passes the test of the appeal as well as the revisional provisions under Section 263 and Section 264 of the Act.

9. After carefully examining the pleadings and the documents, the sole question that arises is as to whether a departmental proceeding can be initiated for having passed the orders which are of quasi-judicial nature. In the case of **Govinda Menon vs. Union of India (A.I.R. 1967 S.C. 1274)**, it was observed by the apex court that if there is no prima facie material for showing recklessness or misconduct on the part of the official exercising quasi-judicial duties, then the initiation of a departmental inquiry cannot be justified. If in exercise of the quasi-judicial functions, that authority has passed any order, then it cannot be said that that authority has acted in a careless and negligent manner unless there is proof that the applicant acted so in 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 in exercise of the statutory powers. In the light of the decision handed over in **Govinda Menon** (supra), we made a search in the record for a prima facie case against the applicant which lead the respondents to initiate the disciplinary inquiry under challenge. The mere allegation in the article of charge that the applicant acted in a careless and negligent manner will not amount to a prima facie proof and hence we are constrained to observe that the ratio laid down in **Govinda Menon** shall be our guide in determining whether the departmental inquiry against the applicant for having exercised quasi-judicial powers can be initiated or not. In the case of **V.B. Trivedi (Civil Appeal No. 4986-87 of 1990 arising**

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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 action."

We are reminded of the case of **C.S. Kesava (1986) Vol. 176 Income Tax Reports, page 375**, the Division Bench of the Kerala High Court made the following observations:

> "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."

This case was with regard to the exercise of the quasi-judicial powers by an Income-tax departmental functionary.

The same view was reiterated in the case of **Sudhir Chandra (1990) 14 A.T.C. 337**, by a Division Bench of this Tribunal dealing with the Income Tax functionary who was chargesheeted in a departmental inquiry and passed quasi-judicial orders. This Bench, placing reliance in the case of **Govinda Menon** (supra) observed:

> "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."

Hence, unless there is a prima facie material for showing that the applicant acted in a reckless manner during the discharge of his quasi-judicial functions, departmental proceedings cannot be initiated.

10. In the case of **S.K. Lal (O.A. No. 509/91 dated 21.10.91)**, a Bench of the Principal Bench of this Tribunal observed:

> "If the functionaries exercising quasi-judicial functions are to liveunder constant fear of departmental 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 judgment, 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."

The quasi-judicial functions cannot be exercised with independence, impartiality and objectivity if the functionaries are kept in constant fear of harassment in a disciplinary proceeding. Careful thought should be given before the disciplinary proceedings are started whether the imputationsrelate to distinct or independent circumstances and whether prima facie material is available against that officer. If it is not done, then the distinction between culpable misconduct and interference with exercise of independent judgment willbe blurred and not only the cause of justice but even administrative efficiency will be badly affected.

11. In a recent judgment in the case of **U.O.I. & Ors. vs A.N. Saxena (J.T. 1992 (2) S.C. 532**, the Supreme Court observed:

> "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 ksuch proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

The ratio of this judgment handed over by the Hon'ble Chief Justice of India clearly lays down that when an officer is performing judicial or quasi judicial funtions, disciplinary proceedings regarding any of his actions should be taken only after great care and caution and close scrutiny of his actions according to the circumstances. Departmental proceedings should not be lightly undertaken. They can only be initiated if there is material to indicate culpability i.e. (i) a desire to oblige himself or (ii) unduly favour one of the parties or (iii) an improper motive. We, therefore, place our reliance on the principles laid down in U.O. & Ors. vs. A.N. Saxena (supra) and proceed to examine the case in hand according to the principles laid down in the above mentioned cases.

12. The fact stated above cannot be ignored that in all these 8 cases, the appellate authority had an occasion of examining the assessment orders passed by the applicant during the discharge of his quasi judicial functions. We have closely examined the appellate orders and have marked that in none of these cases, it was observed by the appellate authority that the applicant has caused any loss to the revenue. Similarly, it was not observed by the appellate authority that the assessment orders indicate culpability of the applicant of a desire to oblige himself or unduly favour one of the parties or improper motive. All the assessments made by the applicant were excessive which were slashed down by the appellate authority or there was a direction for reducing the amount of assessment by not the applicant. If the respondents were satisfied, even if the appellate orders were passed, then they could have taken recourse to the provisions of Section 263 under which revisional powers can be exercised in correcting any mistake. Under Section 264 of the Income Tax Act, the Deputy Commissioner/Commissioner Income-tax have powers to take suo moto revision proceedings against any of the assessment made by the applicant. These provisions were not resorted to by the respondents, but they permitted a long period of 6/7 years to pass and then proceed against him with the departmental inquiry. Though the respondents have alleged in their counter that there were irregularities committed by the applicant and hence a prima facie doubt arose against the integrity of the applicant. The respondents also contend that the applicant has committed gross negligence and he passed the orders in a hurry when he was under orders of transfer. As observed by us earlier, there does not appear to be any thread of evidence on scrutiny of the eight appellate orders that the applicant in any manner by making the assessment orders benefited the assessees. If the applicant was under orders of transfer and he has passed the assessment orders, then it does not mean that after receiving the transfer orders he should cease to function and perform his duties according to law.

13. In this era of arrears - judicial or quasi-judicial - if the work is done in a quicker way, the motive should not be imputed

to the person exercising those judicial/quasi judicial functions. Once assessment orders have been examined in appeal or revision, they bestow a finality in law and cannot be assailed colaterally in disciplinary proceedings. The prima facie material, on close scrutiny, was found to be completely absent. A Coordinate Bench of this Tribunal has held in **Virudra Prasad(1988) A.T.C. 190:**

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

We have kept in our mind, while evaluating the evidence on record, the principles laid down by the apex court in **Govinda Menon** (supra) and also in **A.N. Saxena.** Applying the tests or the law laid down in both the cases to the facts and circumstances of this case, we are clearly of the view that the initiation of a departmental inquiry with regard to the quasi judicial functions was not a proper, just and legal step on the part of the respondents.

14. Undoubtedly, these departmental proceedings have been initiated after a long lapse of time. The assessment orders, as observed earlier, were of the year 1982-83. In the cases of M.N. Quresh vs. U.O.I & Ors. (1989) 9 A.T.C. 500, M. Nagalinga Reddy vs. Govt. of Andhra Pradesh & Ors. (1988) 6 A.T.C. 446, Pyara Singh vs. D.D.A. (1984 (2) S.L.R. 658), P.L. Khandelwal ys. U.O.I. & Ors. (1989) 11 A.T.C. 27, the unanimous view was that old and stale matters should not be made the subject matter of the disciplinary proceedings. In this case, the stale matters of 1982 and 1983 have been made the subject matter of disciplinary proceedings.

15. If no prima facie material is present showing recklessness or misconduct on the part of the aplicant, then the initiation of a departmental inquiry 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 and negligent manner unless there is proof that the applicant acted so during the discharge of his duties or failed to act honestly or failed to observe the prescribed conditions of the statutoryprovisions. No where in the chargesheet the respondents have pointed out that the applicant

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acted in contravention of the statutory provisions of the Income Tax Act. Officers who exercise quasi-judicial functions cannot claim impugnity from the disciplinary proceedings against them for misconduct or corruption, but before deciding upon starting such proceedings, careful thought should be given whether the imputations relate to distinct or independent circumstances and whether prima facie material is available against that officer. If the actions of such an officer indicate culpability, i.e., a desire to oblige himself or unduly favour one of the parties or an improper motive, then there is no reason why the disciplinary action should not be taken, but all these ingredients are lacking in the chargesheet. The basis of suspicion of a prima facie case is like a house of cards which may amount in the end to the persecution of the officer without a / foundation to stand.

16. The learned counsel for the respondents, Shri R.S. Aggarwal, in the end contended that ordinarily disciplinary proceeding should not be interfered with in a judicial review until it has been completed. The apex court in the case of **Madhav Rao Jiwaji Rao Scindia (A.I.R. 1988, Supreme Court 709)** has observed, while dealing with the powers of a Criminal Court under Section 482 of the Code of Criminal Procedure with regard to the quashing of a chargesheet:-

> "7. The legal position is well-settled and when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations made, prima facie establish the offence. It is also for the Court to take into consideration and special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

17. We, therefore, allow this O.A. and also quash the impugned Memorandum No. C-14011/58/90-V&L dated 26.11.90 (Annexure A-1) and ancillary orders passed by the respondents. The interim orders

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passed earlier shall merge with this judgment. There will be no order as to costs.

(I.P. GUPTA) 13/8/92
MEMBER (A)

(RAM PAL SINGH) 13.8.92
VICE-CHAIRMAN (J)