CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2676/2004
Miscellaneous Application No.913/2005

New Delhi, this the 27th day of **June, 2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.K.Misra, Member (A)

Narindar Singh
At present posted as
Commissioner of Income Tax
Jamnagar, Gujarat. ... Applicant

(By Advocate: Sh. S.K.Gupta with Sh. G.D.Gupta, Sr. counsel)

Versus

1. Union of India
Through Secretary
Deptt. of Revenue
Ministry of Finance
North Block
New Delhi.

2. Sh. V.K.Sharma
Under Secretary
Government of India
Ministry of Finance
Department of Revenue
New Delhi.

3. Shri Y.P.Rai
C.D.I/I.O.
Central Vigilance Commission
Sarkata Bhawan, Block-A
INA, New Delhi. ... Respondents

(By Advocate: Sh. V.P.Uppal)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant belongs to Indian Revenue Service. He joined in 1972. He had been earning his due promotions and is presently working as Commissioner of Income Tax. By virtue of the present

application, he seeks quashing of the memorandum and articles of charge of 30.1.2004. The Articles of Charge framed against him reads:

> **"Article I**
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> That the said Sh. Narender Singh, while functioning as CIT Rohtak during the financial year 1999-2000, failed to properly monitor the survey case of M/s Hari Iron Trading Co., Gurgaon, for Assessment Year 1998-99 and showed undue favour to the assessee. The assessment so framed u/s 143(3) by the assessing officer was set aside u/s 263 of the I.T. Act by his successor CIT, Rohtak, as the same was erroneous and prejudicial to the interest of revenue.
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> By his above acts of omission and commission, Sh. Narender Singh failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a government servant, thereby violating Rules 3 (1) (i), 3(1) (ii) and 3(1) (iii) of the CCS (Conduct) Rules, 1964.
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> **Article II**
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> That the said Sh. Narender Singh, while functioning as CIT Rohtak during the financial year 1999-2000, initiated the proceedings u/s 263 of the I.T. Act in 3 cases without sufficient grounds to hold that orders passed u/s 143(3) by the assessing officer were erroneous and prejudicial to the interests of revenue. Further, even though the assessees furnished the required explanations/replies, Sh. Narender Singh, with ulterior motive, failed to decide the proceedings u/s 263 and sought to prolong them by such measures as conducting unnecessary enquiries and recording statements u/s 131.
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> By his above acts of commission and omission, Sh. Narender Singh failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a government

servant, thereby violating Rules 3 (1) (i), 3(1) (ii) and 3(1) (iii) of the CCS (Conduct) Rules, 1964

Article III

That the said Sh. Narender Singh, while functioning as CIT Rohtak during the financial years 1998-99 & 1999-2000, failed, as a supervisory authority, to take all possible steps to ensure the integrity and devotion to duty of his subordinate officer, Sh. G.N.Goel, ITO ward-2 Gurgaon, who in an irregular manner attached and released the bank accounts of the assessees u/s.281-B of the IT Act, without taking the prior approval of the CIT, Sh. Narender Singh.

In thus failing to ensure the integrity and devotion to duty of his subordinate, Sh. Narender Singh violated Rule 3(2)(i) of the CCS (Conduct) Rules, 1964."

2. It is accompanied by the statement of imputation of misconduct. According to the applicant, no case is drawn against him for different reasons, to which we shall refer to hereinafter and that there is an inordinate delay in initiation of the departmental proceedings.

3. In the reply filed, it has been pleaded that issue raised had been examined in depth. The disciplinary authority had decided to appoint the inquiry officer and the Presenting Officer only after considering the controversy and it is stated that on 6.12.2004, the order had been passed in pursuance of the directions of this Tribunal. An inquiry had been directed to be continued. Various pleas have been taken to counter the contentions of the applicant.

4. We have heard the parties' counsel and have seen the relevant record.

5. So far as delay in initiation of the disciplinary proceedings is concerned, indeed there is not much dispute in law.

6. The Supreme Court had considered this fact in the case of **STATE OF MADHYA PRADESH** v. **BANI SINGH AND ANOTHER,** 1990 (2) SLR 798 where there was a delay in initiation of the departmental proceedings. In that matter also, a delay of 12 years occurred to initiate the departmental proceedings. The Supreme Court deprecated the said practice of initiation of departmental proceedings after so many years. The findings of the Supreme Court are:

> "4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in irregularities, and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are not grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal."

7. At this stage, it may be worthwhile to mention the case of **B.C.CHATURVEDI** v. **UNION OF INDIA AND OTHERS,** (1995) 6

SCC 749. In that case also, there was a delay in initiation of departmental proceedings. The matter was before the Central Bureau of Investigation. It had opined that the evidence was not strong enough for successful prosecution, but recommended to take disciplinary action. In that backdrop, the Supreme Court held that the delay would not be fatal. The findings read:

> "11. The next question is whether the delay in initiating disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

8. In cases where there is controversy pertaining to the embezzlement and fabrication of false records and if they are

detected after sometime, the Supreme Court held that the same should not be profiled. To that effect, we refer the decision in the case of **SECRETARY TO GOVERNMENT, PROHIBITION & EXCISE DEPARTMENT** v. **L. SRINIVASAN,** 1996 (1) ATJ 617, where the Supreme Court held:

> "The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge leveled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any conclusion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appear (sic) to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

9. In the case entitled **STATE OF ANDHRA PRADESH** v. **N. RADHAKISHAN,** JT 1998 (3) SC 123, the Supreme Court held that if delay is unexplained, prejudice would be caused and if it explained, it will not be a ground to quash the proceedings. The Supreme Court findings are:

> "If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or where there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

From the aforesaid, it is obvious that departmental proceedings should be initiated at the earliest but the matter necessarily has to be examined on the touchstone of the prejudice. If prejudice is caused, in that event, the Tribunal/Court would be justifying in questioning the proceedings. But if a person is able to contest the matter fully aware of the nature of the dispute, in that event delay not be fatal. In the present case, there is no inordinate delay in terms that the matter pertains to the year 1998 onwards. Perusal of the pleas taken clearly show that the applicant was fully aware of the facts and is bringing the total facts to the notice of this Tribunal. Thus when he was aware of the facts, it must be termed that no prejudice is caused to the applicant on this ground. Therefore, the plea of the applicant must fail.

10. The main argument advanced has been that the charges served should be quashed. The learned counsel for the

respondents immediately took up the objection that at the initial stage, it will not be appropriate to go into the details and thereafter quash the proceedings.

11. To set the record straight, it would be proper to state that as yet the Articles of Charge have been served. On an earlier occasion, the applicant had filed OA 571/2004. On 31.8.2004, this Tribunal had disposed of the application directing the disciplinary authority to consider the pleas of the applicant. It is thereafter that the order dated 06.12.2004 has been passed, rejecting the contentions of the applicant.

12. Position is well settled that at the initial stage when charges only are served, the Tribunal/Court would be reluctant to interfere. It would only be justified in interfering with the charges read with imputation if particulars of charges draw no misconduct. But correctness of the truth of the charges would not be gone into. This Tribunal will not take over the functions of the disciplinary authority or otherwise charges that have to be gone into by the disciplinary authority.

13. In the case of **UNION OF INDIA AND ANOTHER** v. **ASHOK KACKER**, 1995 SCC (L&S) 374, the charge-sheet was being impugned without waiting the decision of the disciplinary authority. The Supreme Court held that it is premature. The findings of the Supreme Court are:

> "4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a

charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had refused to the Tribunal, we do not consider it necessary to require the tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

14. In the case of **MANAGING DIRECTOR, MADRAS METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND ANOTHER** v. **R. RAJAN AND OTHERS,** (1996) 1 SCC 338, the Supreme Court held that no interference was called for at an interlocutory stage of the disciplinary proceedings. The findings of the Supreme Court are:

"7. As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this stage of this disciplinary proceedings. So far as the learned Single Judge

> is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager, the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash).

Same was the view expressed by the Supreme Court in the case of **STATE OF PUNJAB AND OTHERS** v. **AJIT SINGH,** (1997) 11 SCC 368 and in the case of **AIR INDIA LTD.** v. **M. YOGESHWAR RAJ,** 2000 SCC (L&S) 710.

15. Even in the case of **DISTRICT FOREST OFFICER** v. **R. RAJAMANICKAM AND ANOTHER,** 2000 SCC (L&S) 1100, the Supreme Court held that interference is not called for pertaining to the correctness of the charges. The findings are:

"1..... Learned counsel appearing for the appellant urged that the kind of limited jurisdiction conferred upon the Tribunal, it was not open to the Administrative Tribunal to go into the correctness or otherwise of the charges leveled against the respondents and thereby quashed the charge-sheets issued against them. We find merit in the submission. In **Union of India** v. **Upendra singh** [(1994) 3 SCC 357] it was held thus: (SCC p.362, para 6)

> "6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

2. In view of the aforesaid decision we find that the Tribunal was not justified under law to interfere with the correctness of the charges leveled against the delinquent officer. We, therefore, set aside the order and judgment of the Tribunal under appeal....."

16. It is these principles which are not in dispute that have to be kept in mind.

17. With this limited scope, we take up the Articles of Charges. So far as Article of Charge No.1 is concerned, it has been asserted that while the applicant was working as Commissioner of Income Tax, Rohtak, he failed to properly monitor the survey case of M/s Hari Iron Trading Co., Gurgaon for Assessment Year 1998-99 and showed undue favour to the assessee. The assessment so framed under Section 143(3) by the assessing officer was set aside by his successor as the same was erroneous and prejudicial to the interest of the revenue. In the statement of imputation of misconduct further details are forthcoming. It appears that a survey under Section 133A of the Income Tax Act was conducted on 27.11.1997 in case of M/s Hari Iron Trading Co., Gurgaon. During the course of survey, excess cash of Rs.50,000/- and stock of Rs.10,00,000/- were found which had been surrendered by the assessee for taxation purposes. The assessee also submitted three cheques for a total amount of Rs.3,67,500/- towards his advance tax liability. However, in the return of income filed on 29.10.1998, the assessee did not include his total surrendered amount of Rs.10.50 lakhs. The assessment case had been completed vide order passed under Section 143(3) of the Act on 31.3.2000 at a total loss of Rs.1,27,011/-. The dispute arose that no worthwhile inquiries/investigation had been made. The Commissioner of Income Tax, Rohtak had passed an order setting aside of the fresh assessment on the ground that assessing officer failed to make inquiries/investigations from the parties concerned. It was challenged before the Income Tax Appellate Tribunal. The said

authority disposed of the appeal. It was noted that fresh assessment order had been passed in which surrender amount of Rs.10,50,000/- had been brought to tax.

18. The grievance made was that the amount surrendered during the course of survey by the assessee, M/s Hari Iron Trading Co. was allowed to remain outside the tax net with ulterior motive in the initial Assessment order. It was detrimental to the interest of revenue.

19. From these facts, conclusion drawn was that there has been a gross negligence on the part of the applicant, who with ulterior motive, did not conduct proper monitoring in the abovesaid case.

20. However, the matter, pertaining to the said assessee, had become a subject matter of controversy before the Punjab & Haryana High Court in the case entitled **Hari Iron Trading Co.** v. **Commissioner of Income Tax**, 2003 Income Tax Reports (Vol.263) page 437. The Punjab & Haryana High Court held:

> "Since the controversy revolves around the determination of facts as to whether the Assessing Officer had made proper inquiries during the assessment proceedings or not, the department was directed to produce the relevant record.
>
> We have heard the counsel for parties and have perused the record.
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> .... The Assessing Officer had duly raised the issue (of excess stock) in the notices dt. 6-10-1999 and 10-1-2000 whereby he required the assessee to produce the relevant books and bills for his verification. The record also shows that the contention of the assessee

was found to be correct on verification and, therefore, the Assessing Officer had accepted the contention of the assessee that surrender of Rs.10 lacs had been made due to a bonafide mistake in calculation of stock as per books and in fact there was no discrepancy in stock. In fact, in the assessment order itself the Assessing Officer has given the following office note to explain as to why the addition of Rs.10 lacs was not being made:-

> "In this case survey u/s 133A was carried on 27.11.97 and physical verification of the stock was made. The total value of the stock at the business premises was worked out at Rs.5225483/- as per physical verification as against stock of Rs.4321882/- as per books. Against this excess stock of Rs.903601/-, Shri Ram Kishan Gupta, husband of partner had surrendered an amount of Rs.1000000/- at the time of survey. This surrendered income of Rs.1000000/- has not been shown in the return filed. Now the assessee has stated that at the time of survey following three bills had been left to be taken in totaling though these bills were duly entered in the account books. The bills are as under:-
>
> M/s Aggarwal Enterprises:
>
> | | |
> |---|---|
> | Bill dated 29.10.97 | Rs.283850 |
> | Bill dated 26.11.97 | Rs.221475 |
> | Bill dated 27.11.97 | Rs.201447 |
> | | --- |
> | | Rs.706781 |
> | | --- |
>
> This claim of the assessee is found to be correct as the same have been found entered above the signatures of the Inspector on the purchase account made at the time of survey U/s 133A.
>
> M/s Ag---e

It has further been claimed that the goods in respect of the following bills had also been received prior to survey and these goods were present in the shop at the time of survey. These were purchased from:

i. M/s Ashiana Ispat Ltd.	Bill dated 26.11.97	Rs.131642
ii. M/s J.H.Ispat (India) Govindgarh	Bill dated 26.11.97	Rs.106838
Frieight expenses		Rs.33482
		Rs.271961

Copy of the bills and Chungi receipts in respect of the above have been furnished. The excess stock found at the time of survey has therefore, been properly explained.

Sd/-
DCIT"

Record also shows that purchases from various parties had duly been verified as the Assessing Officer has placed on record certified copies from such parties.

In the light of the above factual background, we have not been able to appreciate as to how the Commissioner has recorded a finding that the assessment had been framed without application of mind or that difference in stock was not properly examined. Unfortunately, his order is totally non-speaking and it does not convey as to what according to him should have been proper examination by the Assessing Officer. The assessee had filed a detailed reply to his notice u/s 263(1) of the Act which has been rejected without giving any reasons whatsoever. The Commissioner does not appear to have either perused the records or applied his mind to the detailed reply filed by the assessee. He has not discussed even a single contention

raised therein. We have referred to the assessment record and find that the Assessing Officer had issued various notices on these points and had satisfied himself that the addition of Rs.10 lakhs on account of discrepancy in stock was not called for as there was no discrepancy in stock. The Tribunal has done no better."

It was further observed by their Lordship as under:

"As already observed we have examined the records of the case and find that the Assessing Officer had made full inquiries before accepting the claims of Assessee qua the amount of Rs.10 Lacs on account of discrepancy in stock. Not only this, he has gone even a step further and appended an office note with the assessment order to explain why the addition for alleged discrepancy in stock was not being made. In the absence of any suggestion by the Commissioner as to how the enquiry was not proper, we are unable to uphold the action taken by him under section 263 of the Act.""

21. It clearly shows that Punjab & Haryana High Court approved the findings that proper inquiry had been made. Once the matter had been conducted by the decision of the Court, there is precious little for us to consider afresh that proper inquiry had not been conducted. In fact, the Punjab & Haryana High Court had set aside the orders passed by the Income Tax Appellate Tribunal and the subsequent order of the Commissioner of Income Tax.

22. In the order passed dated 06.12.2004 it has further been held:

> "6.1 It was found that the investigations conducted by the Assessing Officer in the course of fresh assessment proceedings in pursuance of the order u/s 263 in the case of M/s Hari Iron Trading Co proved beyond doubt that the excess stock found in the course of survey was not properly explained. One of the parties from whom goods had been claimed to have been purchased but bills not take into account while totaling the purchases could not produce its books of accounts as these were allegedly destroyed in fire. In respect of purchases claimed to have been made from another party, the assessee went to the extent of fabricating evidence in the form of a toll receipt which the Municipal Committee confirmed as fake. The above investigations, made in the course of fresh assessment proceedings, were found quite relevant for the purpose of administrative vigilance/disciplinary proceedings. The High Court's observations while quashing the order u/s 263, could not be taken into consideration for the purpose of proceedings against the CO, because the results of investigations made in the course of fresh proceedings were never before the High Court, nor the High Court had an occasion to consider these vital evidence."

23. The said reasoning, on the principles, appears to carry little wait. The decision of the Punjab & Haryana High Court had been made before these observations have been made. It is improper now to conclude that the High Court could not take into consideration the result of investigation in those proceedings which were not brought to the notice of the Punjab & Haryana High Court. It was for the department to bring the correct facts to the notice of the Court. The findings of the Court cannot be set aside in this manner.

24. An argument advanced was that it was the dispute between the assessee and State. Departmental proceedings are to be gone into between the State and the delinquent and, therefore, the said decision should not be taken note of as is being asserted by the applicant.

25. The findings of the Court cannot be ignored in this manner. We have already given brief resume of the assertions that have been made against the applicant.

26. It has been asserted that the applicant was negligent and did not conduct proper monitoring of the case. The High Court has already returned the findings that there was proper scrutiny before accepting the claim and action taken under Section 263 of the Income Tax Act had been set aside. In that view of the matter, we find that keeping in view the facts brought on the record, it cannot be termed that the Articles of Charge No.1 requires any further probing.

27. As regards Article of Charge No.2, it has been alleged that while functioning as Commissioner of Income Tax during the financial year 1999-2000, proceedings were initiated without sufficient grounds to hold that orders under Section 143(3) by the assessing officer were erroneous. Though assessee furnished required explanations but applicant with ulterior motive failed to decide the proceedings and prolonged them by conducting unnecessary inquiries.

28. Instance of M/s Raju Convertors (P) Ltd., Faridabad has been given. In this case, a show cause notice under Section 263 of

the Income Tax Act was stated to have been issued by Narender Singh. It was noticed that even though the consumption of power and fuel at Rs.1,89,050/- was shown to be a three fold jump, the increase in the sales was just 16% and that in this process enhanced production has been suppressed. The imputation of charge goes on to state that during the course of proceedings, the applicant conducted number of hearings. They were not concluded even after a period of more than one year. In spite of the detailed replies filed by the assessee, no decision regarding setting aside of the assessment order or filing the show cause notice was taken. The applicant was behaving as if it was a scrutiny assessment proceedings that have been conducted.

29. Almost similar is the matter of Sh. Tavinder Singh Bedi, Faridabad. Therein also, in response to show cause notice, a detailed reply is stated to have been filed by the assessee. Despite the elaborate details filed by the assessee, the applicant did not take a decision either way regarding setting aside of the assessment order or filing the show cause notice issued by him and this shows that he was conducting the proceedings in a manner which was more like a scrutiny assessment proceedings rather than the proceedings under Section 263 of the Income Tax Act.

30. Similar assertions are in the case of M/s Rail Road Constructions Company Pvt. Ltd., Faridabad. The presumption drawn is that in this process, Shri Narender Singh with ulterior motive, failed to decide the proceedings and prolonged them

making unnecessary inquiries. It cannot be disputed that under Section 263 of the Income Tax Act, the applicant was duty bound to make inquiries. The department does not inform as to which of the inquiries are irrelevant and unnecessary. No details are forthcoming. A quasi judicial authority was conducting the proceedings. Disciplinary authority should not substitute its judgment over that of the said authority. It is not a case where the proceedings have been allowed to become barred by time. The proceedings necessarily in the provisions of the Act have to be completed within a specified period and during that period if some inquiries have been held and made, it is difficult to presume that there is ulterior motive because they have not been spelt out. Merely using the word `ulterior motive', will not be drawn to be so. It cannot be left for the imagination as to what those ulterior motives could be. Unless specific acts of ill motives are drawn, the inferences as have been drawn, would be difficult to be supported.

31. The third charge pertains to the fact that the applicant while functioning as Income Tax Commissioner, Rohtak, in the years 1998-1999 and 1999-2000 failed, as supervisory authority, to take all possible steps to ensure integrity and devotion to duty of his subordinate officers, who with mala fide intentions, attached as well as released the bank accounts of the assesses. In the imputation along with the articles of charge, instances of Sh. Ganpat, Sh. Mangal and Sh. Kamal Singh have been given. In other four cases of S/Sh. Surjeet Singh, Satbir Singh, Kapoor Singh and Parkash Singh, it has been stated that attachment of

accounts for a sum of Rs.3 lacs each, was made by Sh. S.N.Goel on the basis of the informal letters.

32. The basic assertions are that once Shri Goel, beyond the provisions of the Income Tax Act, requested the Branch Manager in an informal manner not to release any amount from the bank accounts, it was negligence on his part and he was also negligent in cases of S/Shri Mangal and Kamal Singh, to which we have referred to above. It is contended that the applicant ignored these irregularities committed and was the supervisory authority who was required to take all possible steps to ensure integrity and devotion to duty of his subordinates.

33. At the outset, we do not dispute the proposition that if a discretionary power has been exercised for an unauthorized purpose, it is immaterial whether it is repository in good faith or bad faith.

34. The leading case is that of **UNION OF INDIA & OTHERS** v. **J. AHMED,** 1979 SCC (2) 286. The charges leveled were that Shri J.Ahmed failed to take effective preventive measures against widespread disturbances which broke out in the district. He showed a complete lack of leadership and did not keep the Government informed of the extent of disturbances.

35. The question for consideration was as to if it could be taken to be a misconduct or not? The Supreme Court held that failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership

would not constitute failure to maintain devotion to duty. The findings read:

> ".. Failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership would not constitute failure to maintain devotion to duty. The expression `devotion to duty' appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character of personal ability would not constitute misconduct for the purpose of disciplinary proceedings.
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> "11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. foster [17 QB 536, 542]).* A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (indicator Newspapers ((1959) 1 WLR 698)].* This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur (61 Bom LR 1596),* and *Satubha K. Vaghela v. Moosa Raza (10 Guj LR 23).* The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:
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> "Misconduct" means, misconduct arising from ill motive; acts of negligence; errors of judgment, or innocent mistake, do not constitute such misconduct."

36. In our considered opinion, the decision clearly applies in the facts of the present case.

37. There is another way of looking at the matter. Admittedly, the applicant was exercising quasi judicial functions. The Supreme Court had gone into this controversy as to in what circumstances departmental proceedings can be invoked, in the case of **UNION OF INDIA AND OTHERS** v. **K.K. DHAWAN**, (1993) 2 SCC 56. The conclusions drawn were:

> "28. Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to

bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) If he has acted in a manner which is unbecoming of a Government servant;

(iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) If he had acted in order to unduly favour a party;

(vi) If he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great"."

38. It was again considered in the case of **UNION OF INDIA AND OTHERS** v. **UPENDRA SINGH,** (1994) 3 SCC 357. In the case of **ZUNJARRAO BHIKAJI NAGARKARU** v. **UNION OF INDIA AND OTHERS,** (1999) 7 SCC 409, the Supreme Court held that once there is a quasi judicial order and some penalty imposable has not been imposed, which was obligatory for the officer to

impose, it cannot always be taken to be a misconduct. The findings are:

> "41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.
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> 42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.
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> 43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere

> mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

39. Keeping in view the aforesaid, merely because there was a little lack of supervision, without ill motives and there being no gross negligence, it would be difficult to import the concept of misconduct in this regard.

40. Resultantly, we find that while reading the charges and the imputations, it is not possible to conclude that in the peculiar facts, the impugned orders should be sustained.

41. Resultantly, we allow the present application and quash the impugned orders.

(M.K.Misra)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/