

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No. 1394/1992

DATE OF DECISION: 18.9.92

Mrs. S.K.Nigam

.. Applicant

vs.

Union of India through the
Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi and Another.

.. Respondents

For the Applicant

.. Shri P.P.Khurana,
Advocate

For the Respondents

.. Shri ^{R.S.}~~S.K.~~ Aggarwal,
Advocate

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THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.T.S.JBEROI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 22nd May, 1992 the applicant who has been working as Commissioner of Income-tax, Delhi-X, New Delhi has challenged the impugned charge memo dated 24.4.92 at Annexure A-1 issued against her for a minor penalty under Rule 16 of the C.C.S. (C.C.A.) Rules. The factual background of the case is given in the Statement of imputations annexed with the impugned memorandum. The statement reads as follows:-

"The said Smt.S.K.Nigam, while functioning as Commissioner of Income-tax, Delhi-X, Delhi, during the Financial Year 1989-90 passed an order u/s 132(12) of Income Tax Act, 1961 dated 15.12.89, on a petition u/s 132(7)/132(11) filed by one M/s, Bansal Commodities 4/9, Asaf Ali Road, New Delhi.

"2. The facts leading to the passing of the above order were that, searches were conducted on 26.04.89 against one Shri R.K.Agarwal of Sadar Bazar ~~Bazar~~, Delhi, u/s 132(1) of Income Tax Act, under the authorisations issued by the Director of Income-tax(Investigation), New Delhi, on the information that he was dealing in black marketing of non-ferrous metals. During these searches, documents indicating that Pay Orders of Rs.50.40 lakhs were purchased on 26.04.89 through a bank account opened in the name of one Shri Surinder Kumar with the Punjab National Bank, Mall Road Branch, Delhi, were recovered from the premises of Shri R.K.Agarwal. Consequently, a further search was authorised against Shri Surinder Kumar to search the premises of the Punjab National Bank, Mall Road, Branch, Delhi. On this authorisation, a deemed seizure of 7 Pay Orders aggregating Rs.50.40 lakhs was effected by the authorised officer on 27.04.89, under the second proviso to Section 132(1), although the Pay Orders could not be physically found or seized. Accordingly, prohibitory orders were issued by the Authorised Officer restraining the bank from dealing with these Pay Orders in case the same were presented.

3. Subsequently, on 24.05.89 one M/s.Bansal Commodities filed a petition before the Director of Income-tax(Investigation), Delhi, stating that it had given Rs.49.03 lakhs on various dates between 03.01.89 and 28.02.89 to four concerns of Shri R.K.Agarwal, namely, M/s.Popular Industries, M/s. Prominent Enterprises, M/s. Manoj Metal Industries and M/s. Jasoria Industries, for obtaining supplies of copper from M/s.Hindustan Copper Ltd. and that Shri R.K.Agarwal had obtained Pay Orders of Rs.50.40 lakhs out of this amount, and had handed over the same together with the

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authority letter of his four sister concerns, to it (i.e. M/s. Bansal Commodities) for lifting the stocks from M/s. Hindustan Copper Ltd. It claimed that the Pay Orders are in its possession and were given to it in lieu of consideration already paid. It, therefore, urged that the seizure was illegal and may be vacated.

4. Subsequently, proceedings u/s 132(5) of Income Tax Act were initiated against Shri R.K. Agarwal, by the Assistant Commissioner of Income-tax (Investigation), 14(1), Delhi, (Shri A.K. Jaiswal) in respect of the various assets seized during the above searches including the seized Pay Orders of Rs. 50.40 lakhs. Simultaneous proceedings u/s 132(5) of Income Tax Act were also initiated against Shri Surinder Kumar by the Assistant Commissioner of Income-tax (Inv.) (16)(1), Delhi (under Commissioner of Income-tax-X, Delhi), who had jurisdiction over the address of Shri Surinder Kumar as given to the bank. In the proceedings before the Assistant Commissioner of Income-tax (Inv.), 14(1), Delhi, M/s. Bansal Commodities raised their aforementioned claim. Shri R.K. Agarwal admitted in these proceedings that the aforementioned bank account in Punjab National Bank in the name of Shri Surinder Kumar was his benami account and that the deposits in this account were made by him. In other respect, the version of M/s. Bansal Commodities was affirmed by Shri Agarwal. However, the Assistant Commissioner of Income-tax (Inv.), 14(1), did not accept the said version and held that the money in question belonged to Shri R.K. Agarwal himself. In an affidavit dated 21.08.89 filed before the Assistant Commissioner of Income-tax, Shri Agarwal also admitted being the real owner of 14 firms being run in various benami names. The Assistant Commissioner of Income Tax examined the particulars of the various other assets, namely, cash, F.D.Rs., jewellery, as also information about

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87 immovable properties, 27 benami bank accounts and 29 benami firms etc. seized in the case of Shri R.K.Agarwal and in his order u/s 132(5) dated 25.08.89 estimated the total income of Shri R.K.Agarwal for the assessment year 90-91 at Rs.5,51,43,580/- and the corresponding tax liability of Rs.2,97,55,123/-. This computation was against an undisclosed income of only Rs.1.20 crore admitted by Shri Agarwal in the statement u/s 132(4) given during the search.

" 5. In the proceedings, u/s 132(5) against Shri Surinder Kumar before the Assistant Commissioner of Income-tax(Inv.), 16(1), Delhi, neither any notice could be served on Shri Surinder Kumar, nor the local enquiries could show that such a person existed on the given address. An order u/s 132(5) was passed by the Assistant Commissioner of Income-tax, 10(1) on 23.08.89 holding the peak credits in the afore-mentioned bank account in the name of Shri Surinder Kumar to be his unexplained income and estimating incomes for the Assessment Year 1989-90 and 1990-91 at Rs. 18,46,424/- and at Rs. 52,53,592/- respectively, resulting in an estimated tax liability of about Rs.71 lakhs.

" 6. Thus, both the Assistant Commissioners of Income Tax, in their respective orders u/s 132(5), directed that the entire seized assets (including the Pay Orders of Rs.50.40 lakhs) should be retained and not released.

" 7. A petition u/s 132(11) was filed by Shri R.K.Agarwal on 21.08.89 before Shri S.K.Lal, the then Commissioner of Income Tax, Delhi-IX, Delhi. Another petition u/s 132(7)/132(11) was filed by M/s.Bansal Commodities on 22.09.89 before Shri S.K.Lal as Commissioner of Income Tax-IX, Delhi

Both these challenged the order u/s 132(5) passed in the case of Shri R.K. Agarwal by the Assistant Commissioner of Income-tax(Inv.), 14(1), Delhi. On 22.09.89 M/s. Bansal Commodities also filed a petition u/s 132(1)/132(11) before the said Smt. S.K. Nigam, the then Commissioner of Income Tax-X, Delhi, Challenging the order u/s 132(5) of the Assistant Commissioner of Income-tax(Inv.), 16(1), Delhi, in the case of Shri Surinder Kumar also. An order u/s 132(12) was passed by the then C.I.T., Delhi-IX, Delhi Shri S.K. Lal on 27.11.89 on the petition of M/s. Bansal Commodities upholding their claim that the Pay Orders of Rs. 50.40 lakhs were acquired out of the sum of Rs. 49.03 lakhs advanced by them to the 4 benami concerns of Shri R.K. Agarwal. The Pay Orders were directed to be released subject to the furnishing of a bank guarantee for the balance amount of Rs. 1,37,000/- and the decision of the Commissioner of Income-tax-X, Delhi in the case of Shri Surinder Kumar.

"8. The records show that the said Smt. S.K. Nigam took up the petitions of M/s. Bansal Commodities for out of turn hearing, by issue of notice dated 05.12.89, without there being even a written application from the petitioner for early disposal. The said Smt. S.K. Nigam heard the petition of M/s. Bansal Commodities on 11.12.89 and decided the same on 15.12.89.

"9. As per the normal procedure, the comments of the Assessing Officer are obtained on the petition u/s 132(11) before fixing the same for hearing. In this case, although Smt. Nigam called the comments of the assessing officer but she fixed the hearing on 19.12.89 without awaiting the same and later preponed the hearing to 11.12.89.

"10. In the order dated 15.12.89, Smt.S.K.Nigam simply relied upon and followed the findings arrived at by Shri S.K.Lal, C.I.T.-IX, in his order dated 27.11.89 holding that the deemed seizure of Pay Orders under the second proviso of Section 132(1) of Income Tax Act was illegal. Smt.Nigam failed to appreciate the fact that the seizure of the Pay Orders was effected on warrant issued to search the premises of Punjab National Bank, Mall Road, Delhi, on the basis of information that Shri R.K.Agarwal had deposited cash of Rs.50 lakhs in a benami bank account, in the name of Surinder Kumar, and Pay Orders purchased from this account had not been then delivered and encashed by the bank. Further, the authorised officer had also restrained the bank from honouring these as the cash was still in the bank account of Shri Surinder Kumar.

"11. In her order dated 15.12.89 the said Smt. S.K.Nigam gave two reasons for holding that the seized Pay Orders of Rs.50.40 lakhs belonged to M/s. Bansal Commodities. Firstly, she held that M/s.Bansal Commodities had in fact advanced a total amount of Rs.49.03 lakhs to the four benami concerns of Shri R.K.Agarwal and these transactions took place through the respective bank accounts. Secondly, she held that, Shri R.K.Agarwal, through the benami bank accounts held by Shri Surinder Kumar, had given the petitioner (M/s.Bansal Commodities) the Pay Orders of the value of Rs.50.40 lakhs. Records, however, show that there was no evidence to establish any link between the money received in the bank accounts of the four benami concerns of Shri R.K.Agarwal from M/s.Bansal Commodities and the various deposits made in the bank account in the name of Shri Surinder Kumar with the Punjab National Bank, Mall Road, Delhi, from which the seized Pay Orders were purchased.

"12. However, records show that the total amount of Rs.49.03 lakhs was transferred ^{by} M/s. Bansal Commodities from its bank account with the Sangli Bank Ltd. and the Union Bank of India to the four benami concerns of Shri R.K.Agarwal in five different transactions between 03.01.89 and 28.02.89. Although copies of these two bank accounts were available on record, no enquiries were made to verify whether the funds in these bank accounts were properly explainable in the hands of M/s. Bansal Commodities. In fact, the bank accounts of M/s.Bansal Commodities show large deposits a day or two before the payments to the benami concerns of Shri R.K.Agarwal. However, no enquiries were made regarding the sources of these deposits by the said Smt. S.K.Nigam, either directly or through the Assessing Officer. Further, since Smt. S.K.Nigam following the order of Shri S.K.Lal, C.I.T.-IX, was accepting that the seized Pay Orders belonged to M/s. Bansal Commodities, she also failed to pass on the relevant information to the officer assessing M/s.Bansal Commodities at Bombay which incidentally should have been done earlier by Shri S.K.Lal, C.I.T.-IX as a follow-up of his order dated 27.11.89, so as to enable him to take appropriate action u/s 132(3) against M/s. Bansal Commodities.

"13. As regards the question whether M/s.Bansal Commodities has actually given the amount of Rs. 49.03 lakhs to Shri R.K.Agarwal, through the four concerns M/s. Popular Industries, M/s. Prominent Industries, M/s. Manoj Metal and M/s.Jasoria Industries, it is seen that none of them were being assessed to tax hence the claims both of M/s.Bansal Commodities and Shri R.K.Agarwal, required to be put to strict proof by Smt. S.K.Nigam.

"14. On the issue whether the funds transferred by M/s. Bansal Commodities to the bank accounts of the four benami concerns of Shri R.K.Agarwal(or the proceeds thereof) were transferred/deposited by Shri

R.K.Agarwal to the bank account in the name of Shri Surinder Kumar with the Punjab National Bank, records show that the issue was not verified by the said Smt. S.K.Nigam at all, either directly or through the Assessing Officer, specially as there was no independent evidence at all to establish any nexus between the amounts received by Shri R.K.Agarwal from M/s. Bansal Commodities through his four benami firms on the one hand, and the funds deposited in the bank account of Shri Surinder Kumar utilised for purchasing the Pay Orders of Rs.50.40 lakhs, on the other.

"15. As regards the question as to how the bank balance in the bank account opened in the name of Surinder Kumar with Punjab National Bank, Mall Road, Delhi, was built up, the records show that this bank account was opened on 06.01.89 with a cash deposit of Rs.18 lakhs, and thereafter between 27.01.89 and 08.04.89, huge deposits aggregating Rs.93.60 lakhs were made in this account, mostly in cash. A perusal of this bank account shows that on 08.04.89 the credit balance in this account was Rs.27,35,244/-.Thereafter, between 19.04.89 and 22.04.89, four deposits aggregating to Rs. 49,09,670/- were made, from which the seized Pay Orders of Rs.50.40 lakhs were purchased on 25.04.89. Thus, the funds for the purchase of the seized Pay Orders essentially came from the deposits made between 19.04.89 and 22.04.89. However, no enquiries were made by the said Smt.S.K.Nigam regarding the source of these deposits.

"16. Thus, the claims put-forth by M/s. Bansal Commodities were not established by any proper/ independent evidence. All that could be said from the evidence produced by them before the said Smt.S.K.Nigam, was that they had given Rs.49.03 lakhs between January and February, 1989 to the four benami concerns of Shri R.K.Agarwal for some purpose. Besides, all the attendant circumstances were either against the claims of these petitioners, or at the very least, were such as required those claims to be

put to the strictest proof. Firstly, Shri R.K.Agarwal's statements were not credit worthy because in the first instance, during the search, he denied any connection with or ownership of the bank account in the name of Shri Surinder Kumar, neither had he made any mention of M/s. Bansal Commodities at that stage. This claim came for the first time a month after the search, when on 24.05.89 M/s. Bansal Commodities filed a petition before the Director of Income Tax (Investigation). Thereafter, on 26.04.89, Shri R.K.Agarwal too stated that the Pay Orders belonged to M/s. Bansal Commodities. Secondly, the clandestine nature of transactions was apparent from the fact that Shri R.K.Agarwal had admittedly floated four benami concerns all of which were not being assessed to tax, the Pay Orders were being purchased through admittedly benami bank accounts; and Shri Agarwal was changing his statements and shifting his stand, apparently to suit the convenience of the moment. It was the duty of the said Smt. S.K.Nigam to properly examine the various claims of the petitioners in the light of the evidence on record and after making due investigations, as necessary.

"17. In conclusion, it is, therefore, found that in her order u/s 132(12), Smt.Nigam literally based her order on the findings contained in paras 1,3 & 4 of the order u/s 132(12) dated 27.11.89 of the C.I.T.-IX, Delhi (Shri S.K.Lal) without apparently making any independent enquiries, and independent application of mind, and although she recorded a finding that the seized assets belong to M/s.Bansal Commodities, she did not send an intimation to the C.I.T./A.C.I.T. under whose jurisdiction M/s. Bansal Commodities were being assessed to tax.

"18. Thus, the fore-going discussion shows that the said Smt.S.K.Nigam passed the afore-mentioned order u/s 132(12) dated 15.12.89 in undue haste, in an improper and negligent manner without making

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proper enquiries and without application of mind.
She has, therefore, violated Rules 3(1)(ii) & 3(1)(iii)
of C.C.S.(Conduct)Rules, 1964".

The applicant, has challenged the impugned charge-memo on various grounds. She has argued ^{in the application} that there is no allegation of corruption or personal gain against the applicant, there is no allegation that she exercised her quasi-judicial functions in a dishonest or malafide manner or that she acted in disregard of statutory provisions or administrative instructions. The main thrust of her arguments is that the respondents have no jurisdiction or power to initiate action under C.C.S.(C.C.A.)Rules, 1965 in respect of acts done, orders passed or decisions taken by the applicant as a quasi-judicial authority while exercising her powers under the provisions of Section 132(12) of the Act". In support of this contention, the applicant has quoted a number of rulings of the various Courts including the Hon'ble Supreme Court and of this Tribunal. She has ^{further contended} ~~argued~~ that any charge questioning the exercise of her independent judgment is not sustainable in law. and unless there is clear allegation of corruption or involvement or in-action resulting in any personal gain, she cannot be subjected to disciplinary action. She has also ^{stated} ~~argued~~ that the respondents themselves in Civil Writ Petition No. 1253/90 before the High Court of Delhi justified the propriety, validity and legality of the orders passed by the applicant. As regards her conduct in the quasi-judicial capacity, the applicant has stated that she as C.I.T Delhi X was having supervisory control over the Assistant Commissioner, Investigation Circle 16(1) who

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passed the order of retention on 23.8.89 against Shri Surender Kumar. When a copy of the order dated 27.11.89 passed by the C.I.T, Delhi IX under Section 132(12) was received by the applicant, since it was stipulated therein that the order was subject to such order as may be passed by the applicant as C.I.T, Delhi-X, New Delhi, the applicant thought it fit to proceed with the hearing of the application of M/s. Bansal Commodities who had requested her ^{for} disposing of their application under Section 132(11). She, accordingly, passed the order dated 15.12.89. In the meantime, regular assessment order was passed by the Assistant Commissioner, Investigation Circle 16(1), Delhi in respect of Shri Surender Kumar and a demand of Rs.84 lakhs was raised against him on 13.2.90. ~~On this~~ The applicant directed the concerned Assistant Commissioner to attach the Bank Account of Shri Surender Kumar and simultaneously addressed a letter dated 31.1.90 to the Punjab National Bank. She has ^{contended} ~~argued~~ that she took up the petition of M/s. Bansal Commodities for out of turn hearing because similar early hearing was granted by her ^{colleague in} ~~opposite~~ number, C.I.T IX in respect of the same party and the same subject matter. She has stated that the concerned Assessing Officer had been present during the proceedings and had stated that she had no comments to offer. Admitting that the hearing was preponed from 19.12.1989 to 11.12.1989 she has stated that there is nothing unusual in it. She has denied that she did not apply her mind before passing the quasi-judicial orders.

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The primary order was passed by the C.I.T, Delhi-IX while the applicant admittedly dealt with the case of a non-existent Benami. She has mentioned that while the C.I.T, Delhi-IX Shri S.K.Lal was chargesheeted in November, 1990, no such chargesheet was served on her till 24.4.92 and that also for a minor penalty.

2. In the counter affidavit the respondents have stated that the chargesheet was issued on 24.4.92 and the applicant was given an opportunity to explain her conduct within 10 days of receipt of the memorandum. The applicant instead of filing an explanation to the said memorandum, chose to file this application. Had she filed a representation against the impugned memorandum before the disciplinary authority, it would have been considered by the disciplinary authority and appropriate orders would have been passed. As the applicant has not exhausted the departmental remedy, the D.A is premature. They have referred to the observations made by the Delhi High Court against the applicant and the other Commissioner Shri S.K.Lal on their omissions. Parawise comments have been given on other contentions of the applicant which need not be gone into for the purpose of this order. The respondents have appended a copy of the judgment of the Supreme Court in Civil Appeals No. 50 and 51 of 1992 (Union of India and Ors vs. A.N.Saxena) stating that the rulings quoted by the applicant have been modified by that judgment.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main thrust in the application is that

disciplinary action cannot be taken for the acts of omission or commission of a quasi-judicial authority in the process of the discharge of the quasi-judicial functions. This issue was considered by the Hon'ble Supreme Court in their judgment dated 27th March, 1992 in Union of India & Ors. vs. A.N.Saxena (Judgments Today 1992(2) S.C. 532). The following observations in that judgment will be relevant:-

"8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public 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."
(emphasis added)

In view of the aforesaid observations, the contention of the applicant that the respondents have no jurisdiction to serve the impugned memorandum on her for the actions

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taken by her in the course of the quasi-judicial proceedings, cannot be sustained. It is for the applicant now to show that in accordance with the aforesaid ruling of the Supreme Court, the conditions which are to be satisfied before the disciplinary proceedings are carried on, are not satisfied in her case. This can only be done if she, in compliance ^{of} with the impugned memorandum makes a detailed representation, so that the respondents are able to take a decision on further action to be taken on the proposal to take action against her under Rule 16 of the C.C.S(C.C.A) Rules.

4. Learned counsel for the ^{applicant} ~~respondents~~ has relied on the judgment of a Division Bench of this Tribunal dated 21.10.91 in O.A 509/91, a copy of which is at Annexure A9. In that judgment the chargesheet of charges dated 15.11.90 issued against Shri S.K.Lal, Commissioner of Income Tax, Delhi IX, New Delhi in connection with the same proceedings were set aside. Since that judgment was delivered before the judgment of the Hon'ble Supreme Court dated 27.3.1992 in A.N.Saxena's case was available, the law laid down by the Hon'ble Supreme Court has to be followed. We do not however wish to go into the merits of the case at this stage ^{which as it} appears to us to be premature for judicial intervention. The chargesheet served on the applicant gives her an opportunity to give her explanation so that the respondents can take a decision on further action keeping in view ^{inter alia} the law laid down by the Hon'ble Supreme Court. The applicant has not enabled the disciplinary authority to take a decision in that direction

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because she has not filed any representation meeting the chargesheet and the imputations contained therein.

5. Learned Counsel for the applicant brought to our notice the various rulings given by the Tribunal, the High Court of Kerala and the Hon'ble Supreme Court (Civil Appeal No.4986-87 of 1990 decided by the Hon'ble Supreme Court on 25th October 1990, O.A.1460/86 decided by the Principal Bench of the Tribunal on 11.1.91, O.A 2792/91 decided by the Principal Bench of the Tribunal on 13.8.92; C.S.Kesavan vs. State of Kerala; page 375 of Income Tax Reports , Vol.176,1989; 1988(8) ATC 190; 1989(9) ATC 500; 1989(9) ATC 509; 1990(14) ATC 337; AIR 1979 SC 1022) The quintessence of these rulings is that ^{the} taking of disciplinary proceedings against quasi-judicial authorities for erroneous acts of omission or commission in the discharge of such duties, should be more an exception than a rule. Such proceedings should be taken with great care and circumspection so as not to demoralise such authorities. Otherwise, they will play safe and give orders always in favour of the Government even though justice may demand otherwise. If this is not done , the distinction between ~~culpable~~ ^{culpable} misconduct and interference with exercise of independent judgment will be blurred and not only the cause of justice but even of administrative efficiency will be badly affected. It has also been held that in case of such authorities unless there is corrupt motive, departmental enquiries for misconduct cannot be sustained. The law, however, has been clearly

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laid down by the Hon'ble Supreme Court in A.N.Saxena's case, referred to above. Disciplinary proceedings for quasi-judicial acts of commission or omission have been allowed to be taken where the action of such an authority indicates culpability, a desire to oblige himself or to unduly favour one of the parties or an improper motive. The learned counsel for the respondents draw our attention to the facts indicated in the charge memo that the applicant heard a third party M/s. Bansal Commodities ~~for~~ out of turn ~~hearing~~ without there being even a written application for early ~~disposal~~ ^{having} and that the applicant having invited comments of the Assessing Officer and fixing a date on 19.12.89, preponed the date of hearing to 11.12.89 without awaiting the comments. The charge memo also indicates that no enquiries were made regarding the source of deposits made by M/s. Bansal Commodities. When the other Commissioner Shri S.K Lal passed orders on 27.11.89 releasing the pay orders of Rs.50.40 lakhs subject not only to the furnishing of a bank guarantee ~~on~~ but also to the "decision of the Commissioner of Income-tax X, Delhi in the name of Shri Surender Kumar", the order passed by the applicant should have been passed with more care and after proper verification, enquiries and detailed comments of the Assessing Officer. It can, therefore, be said that even though there may be no desire on the part of the applicant to oblige herself or there was no improper motive, there can be ^{an impression of} elements of a desire to unduly favour some of the parties. Of the three criteria laid down by the Hon'ble Supreme Court in A.N.Saxena's case,

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referred to above, the charge-sheet points at least to one element of undue favour to some of the parties. In that light it is for the applicant now to dispel this impression flowing out of the charge-memo.

6. In the conspectus of facts and circumstances and considering that the learned counsel for both the parties, for expeditious disposal of this application, agreed that the application be disposed of at the admission stage on the basis of the detailed pleadings and arguments submitted by them, we admit the application and dispose of the same with the direction to the applicant to file a detailed reply to the impugned memorandum at Annexure A1 within a period of 10 days from the date of receipt of this order and we direct concerned respondents to take ^{by a speaking order} a decision [^] regarding further action taking into account the reply of the applicant and the law laid down by the Hon'ble Supreme Court in the aforesaid case of A.N.Saxena and other relevant judicial pronouncements, as expeditiously as possible and preferably within a period of ^{one} ~~three~~ months [^] from the date of receipt of the reply from the applicant. We make it clear that any observation made by us in this order should not ^{in any manner} prejudice [^] or influence the consideration of the case of the applicant ~~in any manner~~ ^{by the respondents}. The ^{fact} that the ^{by the applicant} reply is being filed beyond a period of ten days as prescribed in the impugned order dated 24.4.92 should be ignored and the delay condoned. There will be no order as to costs.

T.S. Oberoi
(T.S. OBEROI)
JUDICIAL MEMBER

S.P. Mukerji
(S.P. MUKERJI)
VICE CHAIRMAN

18.9.92