

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL  
AHMEDABAD BENCH

(21)

O.A. No/ 535/89  
Tax No.

DATE OF DECISION 04/3/1994

Shri Jaidev Mallick Petitioner

Mr. M. R. Anand Advocate for the Petitioner(s)

Versus

The Government of India & Ors. Respondent

Mr. M. R. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. B. Patel : Vice Chairman

The Hon'ble Mr. K. Ramamoorthy : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Shri Jaidev Mallick,  
S/o. Late Baradakanta Mallick,  
Dy. C.I.T. (OSD) Audit  
Aayakar Bhavan,  
Ashram Road, Ahmedabad.  
(Advocate Mr. M.R.Anand)

: Applicant

Versus

1. The Government of India  
Through:  
The Secretary, Ministry of Finance  
Dept. of Revenue,  
New Delhi.
2. The Chief Commissioner (Admn)  
of Income-Tax, Ahmedabad.
3. Central Board of Direct Tax  
Ministry of Finance  
North Block, Central  
Secretariat, New Delhi.

: Respondents

(Advocate: Mr. M.R.Bhatt)

ORAL ORDER

O.A. No. 535 OF 1989

Date: 4/3/1994

Per: Hon'ble Mr. N.B. Patel : Vice Chairman

By our order in RA/52/93 we have recalled the order dated 21.7.1993 disposing of this OA as not survived and have directed restoration of the said OA for final hearing. The final hearing of the OA is now taken up at the request of both the learned counsel.

2. The main relief claimed in the O.A. is for having quashed and set aside the Memorandum of charges furnished to the applicant Shri Mallick and the order by which the Inquiry Authority was appointed to hold departmental proceedings against him. It is now stated by both the learned counsel that the inquiry has reached the stage where the Inquiry Authority has submitted its report to the Disciplinary Authority and the Disciplinary Authority is yet to apply its mind and to take a decision whether the report of the Inquiry Authority should be accepted or not. It

appears that it is because of the judgment in the O.A. that the Disciplinary Authority has stayed <sup>hands</sup> its ~~ends~~ off the matter and has not finalised it. Mr. Anand states that the applicant is not now interested in pressing the reliefs claimed in the O.A. for having Annexures A2 and A4 set aside. He states that the applicant will be satisfied, if a direction is issued to the Disciplinary Authority to finalise the disciplinary proceedings within a stipulated time-limit. Mr. Bhatt states that, if reasonable time is given to Disciplinary Authority to finalise the matter, the Respondents <sup>of an</sup> have also no objection to passing the order as suggested by the applicant. We are told that the applicant Shri Malliick is due to retire in the end of May, 1994 or thereabout.

3. In view of the position mentioned above, we direct the Disciplinary Authority to finalise the Disciplinary Proceedings against the applicant Shri Malliick, latest by 8/4/1994. In view of the fact that the applicant is due to retire shortly, <sup>will be</sup> no extension of time ~~is~~ given for finalising the disciplinary proceedings. The decision that may be taken in the disciplinary proceedings, may be communicated to the applicant Shri Malliick within a period of one week after it is taken. It follows that, on the conclusion of the disciplinary proceedings, the consequential steps, necessary to be taken, in accordance with the law,

as regards the question of consideration of the applicant for promotion will be taken well in time before the date of the applicant's retirement.

  
(K. Ramamoorthy)

Member (A)

  
(N.B. Patel)

Vice Chairman

a.a.b.

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Application No. 0910535189 of 19

Transfer Application No. \_\_\_\_\_ Old W. Pett. No \_\_\_\_\_

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 22/07/93

Countersigned :

*Parbat Patel*

281  
Signature of the Dealing  
Assistant

Section Officer/Court officer

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD BENCH

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CAUSE TITLE 09/535/89 OF 19

NAMES OF THE PARTIES Jaiday Mallick

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SIC 537/89  
22/11

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH AT AHMEDABAD

O. A. NO: 535 OF 1989

Jaidev Mallick

.... Applicant

vs.

Union of India & ors.

.... Respondents.

Copy served to  
Mr. R. P. Bhatt  
Advocate  
(One) served to  
Mr. M. R. Mian  
Advocate  
20-11-89

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mt  
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(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH AT AHMEDABAD

O. A. NO: 535 OF 1989

Between

Jaidev Mallick  
S/o Late Baradakanta Mallick  
Dy. C.I.T. (OSD) Audit  
Aayakar Bhavan  
Ashram Road  
Ahmedabad 380 009 .... Applicant

And

1. The Government of India

Notice of the petition to be  
served through the  
Secretary, Ministry of Finance  
Dept. of Revenue  
New Delhi.

2. The Chief Commissioner (Administration)  
of Income-Tax, Ahmedabad.

3. Central Board of Direct Tax  
Ministry of Finance  
North Block, Central Secretariat  
New Delhi 110 001. .... Respondents.

Details of the Application

1. Particulars of the Applicant:

(i) Name of the Applicant : As given in the cause  
title

(ii) Name of Father : As given in the cause title.

(iii) Designation : Dy. C.I.T.(OSD) (Audit)  
Ahmedabad.

(iv) Office Address : Room No.12, Ground Floor  
Aayakar Bhavan  
Ashram Road  
Ahmedabad.

(v) Residential Address : A/5 Income-tax flats  
Opp. High Court  
Ahmedabad - 9.

2. Particulars of the Respondents:

(i) Name and designation : As given in the cause title  
of the respondents

(ii) Office address of the : As given in the cause  
respondents title.

(iii) Address for service of : As given in the cause  
all notices title.

3. Particulars of the orders against which application  
is made :

a) Order No.F.C/14011/45/87 V&L dated 16.2.1988  
of Government of India, Ministry of Finance,  
Department of Revenue, informing the  
petitioner that it was proposed to hold an  
enquiry under Rule 14 of the Central Civil

Service Classification Control and Appeal Rule,  
1965.

*Other (b)* C-14011/45787 V&L  
Order No. ~~21/11/1988~~ Ministry of Finance  
*Followed* Department of Revenue, New Delhi dated 10th December  
1988.

**4. Jurisdiction of the Tribunal**

The applicant declare that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

**5. Limitation :**

The applicant further declare that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

**6. Facts of the Case :**

6.1. The petitioner is a citizen of India. The petitioner is a member of Scheduled Caste. He is an officer of the respondent Union of India. He is a member of Indian Revenue Service Class I. He entered the service as a direct recruit pursuant to his selection by the U.P.S.C. for I.A.S. and allied services in the year 1965. The petitioner joined the service as I.T.O. Class I. He was promoted to the next higher post of Dy. Commissioner of Income Tax (then known as Assistant Commissioner of Income Tax) in the year 1977. The petitioner was promoted in accordance with his seniority and on the

basis of his merit. The petitioner had maintained a clean and meritorious record of service from the very beginning. As a Dy. Commissioner, one is required to complete eight years of service before one can be considered for promotion to the next higher post of Commissioner of Income Tax. The petitioner has completed the service of eight years as Dy. Commissioner in the year 1985 and became eligible for being considered for the promotional post. According to the judgment of the Chandigarh Bench of this Hon'ble Tribunal, the petitioner ought to have been considered (along with others of his batch) for promotion in the year beginning January 1986. But because of certain dispute as to seniority, the petitioner was not deemed to have entered the zone of consideration by the department till the year 1987. In July 1987, the petitioner was confirmed <sup>W</sup> his present post of Deputy Commissioner of Income Tax. He was also given selection grade by the D.P.C. held for the purpose of ~~examination~~ considering the question of his confirmation and conferment of selection grade. Thus it is clear that till July 1987, ~~he~~ was absolutely nothing against the petitioner. The petitioner can categorically say that prior to this stage he has not received any adverse remarks nor was he ever subjected to any departmental enquiry and there was no question of his being punished.

6.2. The D.P.C. for the year 1987 was met on 18th and 19th September, 1987. On 18th September, 1987 itself an order was issued suspending the petitioner though no inquiry was instituted against the petitioner as such. Later on when the petitioner received charge-sheet instituting inquiry, he was horrified because the charge-sheet consisted of trivial charges which can never amount to any misconduct. The charges essentially consisted of slight delay of issuance of refund orders for which in the past even a member of clerical staff were never subjected to departmental inquiry much less suspension from service. It is also noteworthy that the chargesheet was not issued till 16th February, 1988 i.e. seven months after the petitioner's suspension from service. But the suspension of the petitioner by an order dated 8.9.87 did have the effect of depriving the petitioner of his right of being considered for promotion to the higher post. One must say that the timing of the department was perfect. After the purpose ~~of~~ was accomplished the suspension order was revoked by an order dated 27th July 1988. It is a non-speaking order and does not make it clear ~~to~~ why the petitioner was suspended and why the suspension is being revoked when the inquiry is still supposed to be pending against him. A true copy of the order dated 27th July, 1988 revoking the suspension is annexed hereto and marked Annexure 'A-1'.

6.3. The petitioner submits that the memorandum dated 16th February, 1988 consists of a single article alleging that during the period between July 1985 and January 1987, the petitioner had delayed granting of approval for issuance

of certain refund orders. The details of 14 instances of the delay in issuance of refund orders show that according to the department there was delay of about 1½ months to 8 months. It is noteworthy that note a slightest evidence is suggested to show how the petitioner could have any dishonest motive for this very nominal delay which is a routine affair in the department. In fact the petitioner know about other cases where delay of much longer period <sup>occurred</sup> and still no action is taken against any employee unless he is shown to have some corrupt motive for the same. This is because the staff in the department is over-burdened and delay in every Government department is a routine affair in this country. In the present case also none of the petitioner's sub-ordinate, either I.T.O. or the administrative staff has been subjected to any disciplinary proceedings. It is not as if the petitioner as a Dy. Commissioner was solely responsible for this delay. The petitioner can not grant the approval of issuance of refund orders unless the administrative machinery working with him complete its part of the job. Merely looking at the date of the proposal and the date of grant of issuance of approval can be highly misleading and unfair to the officer concerned. The petitioner, thus, was surprised that the charge-sheet did not reveal any misconduct on his part and the effort seem to be just to create a record of pendency of some inquiry against him. A true copy of the memorandum dated 16th February, 1988 along with annexures are annexed hereto

Anne.'A-2' and marked Annexure 'A-2'.

6.4. The petitioner replied to the charge-sheet by his reply dated 26th April, 1988 and refuted the charges in every detail. The petitioner specifically pointed out that he had acted bonafide in discharge of his statutory obligation (which were of quasi judicial nature). The petitioner also pointed out that refund proceedings are part of assessment proceedings which are of quasi judicial nature and merely because some part of it involves administrative function, the true nature of the work which is necessarily quasi judicial as prescribed under section 237 of the Act cannot change. Section 237 require judicial satisfaction by the I.T.O. as to the entitlement to a refund by the assessee. The petitioner as a Dy.CIT, while discharging the function as to approval of refund orders has the same powers which an ITO has while considering the first part of assessment. The petitioner also referred to the departments instructions as to the procedure to be followed prior to IAC for issuance of the refund orders and pointed out that the petitioner has followed the procedure and taken the time which was taken by other officers in smiliar circumstances. The petitioner also referred to every single of the fourteen cases referred to in the charge-sheet and pointed out that he was not responsible for the delay as the time taken by his predecessor as well as by his sub-ordinate staff and other relevant factors in moving of the files were completely ignored. The petitioner need not repeat the reply as a copy of the same is annexed hereto and marked as Annexure 'A-3'. The petitioner

Anne.'A-3'

craves leave to rely upon this reply as part of the petition at the time of hearing as and when necessary.

6.5. The petitioner, thus, pointed out that the charge levelled against him does not constitute any misconduct and that he was being singled out in discriminatory manner for extraneous considerations. The petitioner also pointed out that there are large number of cases where he had acted much faster than other officers. Thus the ~~pk~~ policy of pick and choose should not be adopted in his case when the time taken in each of the cases is carefully explained. The petitioner, therefore, requested that the inquiry pending against him may be dropped and the petitioner may not be subjected to any further harrasment. The petitioner submits that it is also noteworthy that prior to this institution of the inquiry, he had not received any advise from any superior officer that the petitioner was less than prompt in issuance of refund orders. It may be noted that the petitioner was entitled to lenient approach as a Schedule Caste employee, but what he was getting is harsher approach in the matter.

6.6. The petitioner received no reply to his reply at Annexure 'A-3' for several months. Ultimately by an order dated 18th November 1988 an enquiry officer was appointed. The petitioner was served a copy of the order on 9th December, 1988 which is annexed hereto and marked Annexure 'A-4'. Since then no hearing has taken place and the matter is simply pending.

Meanwhile several DPCs have met and the petitioner continues to be by-passed in the name of so called pendency of the departmental proceedings. ~~xx~~ In fact the petitioner has been superceded even by the officers who <sup>were</sup> selected in 1969 batch when the petitioner is of 1965 batch and he has been by-passed. Thus on a trivial charge that prior to January 1987 there was minor delay in issuance of some refund orders and without there being any evidence whatsoever of his lack of integrity, the petitioner is denied the promotion for nearly four years. This penalty is imposed upon the petitioner at the time when the Government is claiming that it is making special efforts to promote the SC/ST candidates and when this cadre is under represented as far as the Scheduled Caste employees are concerned and when there is absolutely no evidence against the petitioner of any impropriety or irregularity and prior to issuance of this charge-sheet his record is absolutely clear and meritorious.

6.7. The petitioner submits that according to him the charge-sheet given to him does not constitute any misconduct and therefore the enquiry cannot be instituted and the institution of enquiry is void ab-initio. However, he has ~~proxima~~ patiently waited to see if he could be exonerated from the trivial charges. But it seems that the Department is not interested in completing the inquiry and the sole purpose of enquiry pending was to deny the petitioner's right of promotion. This is a special treatment being meted out to a Scheduled Caste officer. Aggrieved and dissatisfied by the impugned orders at Annexures A-2 and A-4, the petitioner approaches this Hon'ble Tribunal by way of this application

on the following grounds amongst others:

6.8. The petitioner submits that the issuance of refund order is the part of assessment proceedings which are of quasi judicial nature. Under Section 237 of the Income Tax Act, an ITO is required to arrive at a judicial satisfaction that the refund claim is due and that the assessee is entitled to the same. The delay in issuance of final orders in judicial proceedings can never be the sole responsibility of the officer exercising the judicial powers. It is not as if a judge who decides a given case on a given day when it is placed before him, he is responsible for all the delay that took place before placing the case before him. Such an approach is absolutely arbitrary, perverse and bad in a law. Such a charge can never constitute any misconduct on the part of an officer exercising quasi judicial function.

6.9. The petitioner submits that this Hon'ble Tribunal in the case of M.N. Querishi vs. Union of India (O.A.No.475/88) has taken the view that an ITO in discharging the ~~assessmental~~ functions is doing quasi judicial work and the discharge of quasi judicial function simplicitor cannot be a subject matter of the departmental inquiry on the administrative side. If there is any error or failure in exercise of quasi judicial function, then it can be corrected in the appeal or revisional proceedings and not on administrative side. This judgment of the Hon'ble Tribunal

(7) HT

is subsequently followed in the case of Shri P.D.

Khendelwal vs. Union of India, another deputy CIT of (AIR 1976 SC 166) of 1983. this very department. The ~~xx~~ two judgments of this Hon'ble Tribunal are squarely applicable in the petitioner's case. The institution of the inquiry in those two cases was quashed and set aside by this Hon'ble Tribunal. The petitioner submits that he is seeking the same relief in a very much the same circumstances. The petitioner submits that there cannot be departmental inquiry on administrative side for the alleged delay in discharging of quasi judicial function. The petitioner, respectfully, submits that in many ~~xxx~~ courts cases are pending for more than 10 years and if such an approach, as is adopted by the department is accepted a havoc would be caused in the judicial administration.

6.10. The petitioner submits that apart from discharging the quasi judicial function there is another fundamental objection to the institution of inquiry in such a case. As a matter of fact the Hon'ble Supreme Court in J.A. Ahmed's case (AIR 1979 SC page 2 1022) has said that mere inaction or delayed action on the part of the officer cannot amount to misconduct. If an officer is lacking in efficiency or fails to attain the higher standard, it can be a legitimate subject matter while assessing his work at the time of writing annual confidential report. But to say that this in itself amount to misconduct is arbitrary and perverse and directly in violation of the law laid down by the Hon'ble Supreme Court in Ahmed's case. For this reason also the institution of inquiry against the petitioner is bad in law.

6.11. The petitioner submits that the institution of inquiry against the petitioner is also arbitrary, discriminatory and violative of his fundamental rights under article 14 and 16 of the Constitution of India. The petitioner submits that the procedure for issuance of refund is that first the clerical staff places the concerned file before the competent ITO. The ITO prepares the assessment work and places the assessment order and the proposal for the issuance of refund orders for the approval by the Dy.C.I.T. The Dy.C.I.T. has to apply his mind in a judicial manner and to consider all the sides before giving the judicial decision as to whether the ITOs proposal can be approved or not. Thus the entire machinery involves the working by the administrative staff, subordinate ITO doing quasi judicial work culminating in the approval proceedings before the Dy. CIT. To say that the Dy.C.I.T. is responsible for the delay without considering the role of each of the persons involved in the process and without looking at the complexity of the individual case, the burden of work before the staff, the arrears of the work, time taken by the predecessors, is wholly arbitrary and irrational. This would amount to putting undue pressure on the officers concerned in discharge of their quasi judicial function and is thus arbitrary in as much as it permits the policy of pick and choose. Some delays by the officers with blue eyes may be ignored and the delay by the others like the petitioner may be made

instrument of penalty. This is clearly violative of Article 14 and 16 of the Constitution of India.

6.12. The petitioner submits that the discriminatory and arbitrary treatment given to the petitioner is further clear from the fact that in his case the sole charge is that there was delay of 1½ months to 8 months in issuance of refund orders, when the existing audit report show that there are cases of much longer delays where no action whatsoever is taken even in cases where the delay has resulted in financial loss to the department. In a recent case of another officer the audit party noted that there was delay of 8 to 9 months in issuance of refund order resulting in the public exchequer being burdened with an interest of Rs.71,660/-. No departmental action is taken against the officer concerned. Another case ~~xxxxxx~~ reviewed by the audit officer shown the delay of about 9 months in issuance of refund order resulting in additional interest liability of Rs.1.34 lakhs to the department. In another case of Gujarat Steel Tubes, the audit party noted the delay of more than one year resulting the interest liability of several lakhs. In another case of M/s. <sup>Sharmila</sup> ~~Storm~~ Engineering, the audit party noted the delay of more than 6 months resulting in additional interest liability. Similarly in case of Saurashtra Cement and Chemicals, in 1988-89, there was delay of several months. The petitioner has referred to only the period of delay in passing the order of ~~xx~~ approval, but there were further problems of non-payment of the refund money for much longer period in several of these cases resulting in heavy financial liability to the department in the form of interest. In all these cases, no departmental inquiry whatsoever

is instituted against any of the officers. In all these cases two things are clearly very distinctly. First that the delay attributed to the petitioner, even assuming that the petitioner is solely responsible for it, is normal very ~~minimal~~ delay and secondly no departmental inquiry is instituted for such delays against the officers in spite of ~~maxim~~ there being audit objections as to the accrual of financial liabilities. As against this, the inaction attributed to the petitioner is firstly for a shorter time and secondly has not resulted any financial liability for the department, none at least is pointed out by the charge-sheet. Thus the institution of departmental inquiry in the petitioner's case is clearly discriminatory and in violation of his fundamental rights of equality under Article 14 and 16 of the Constitution of India. The petitioner submits that what is not misconduct for ~~for~~ large number of other officers cannot be misconduct for him only. A true copy of the audit report showing the delay in issuance of refund is annexed hereto and marked Annexure 'A-5' collectively.

Annex.'A-5'

6.13. The petitioner submits that the discriminatory treatment given to the petitioner is further clear from the fact that in the 14 instances referred to from the entire career of the petitioner, it is clear that he was not responsible for the entire delay and substantial period is by the sub-ordinate ITO or by the administrative staff. No action is taken against them or even no action is ~~even~~ proposed against them.

But the petitioner who is responsible for the final leg of the proceedings is sought to be persecuted. This would also show that the institution of the departmental inquiry against the petitioner is for extraneous and improper considerations.

6.14. The petitioner submits that he is a Scheduled Caste Officer. Under the Government policy decisions if he is guilty of any lapse or not achieving a high standard of efficiency, first his attention has to be drawn and he is to be given special guidance in the matter. No such procedure is followed in this case. This fact is specifically pointed out in his reply/representation at Annexure A-3, but is completely ignored. This would also show that instead of getting additional protection, he is singled out for discriminatory and arbitrary treatment. This also shows the malafides of the impugned action of the Government that the petitioner is sought to be penalised for extraneous and improper considerations.

6.15. The petitioner submits that it is also well established preposition of law settled by several judgments of the Supreme Court and the High Court and the judgements of this Hon'ble Tribunal in the above mentioned M.N. Querishi case that the inquiry has to be instituted and completed within a reasonable time. In the present case the alleged incidents pertain to the year 1985-86 i.e. prior to January 1987. Till the end of 1989 the inquiry has not even commenced. Meanwhile the petitioner has been superceded in the matter of promotion by large number of his juniors and the promotions have gone upto 1969 batch. As the time lapses, it becomes very difficult

for the petitioner to defend himself as everything cannot be on the record and the memory cannot remain in tact for long years. For this reason also, the inquiry instituted against the petitioner deserves to be quashed.

6.16. The petitioner submits that the malafides of the respondent authorities and the discriminatory treatment shown to him are further clear from the mysterious manner in which the petitioner was suspended seven months prior to the issuance of charge-sheet and then sudden revocation of the suspension order when the inquiry had not even commenced.

This shows that the purpose was to deprive the petitioner of his promotion in the year 1987. No reasons have appeared on the record as to why the petitioner was suspended and why his suspension was revoked. The petitioner is still not paid the full monthly dues for the suspension period. Thus on every count he is sought to be singled out in arbitrary manner. The petitioner's annual increments are also not released since 1987 though there is not even any official order to that effect. The petitioner submits that if the charges were really genuine and there was substance in them, he could not have been confirmed and given selection grade in July 1987, when the charges pertain to a period prior to January 1987. The impugned action is thus bad in law being vitiated by malafides and on extraneous considerations. It is also in

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Amendment carried out as per Court's order dtd.

(1) To quash and set aside the impugned order at Annexures A-2 and A-4 as illegal, unconstitutional, without jurisdiction, null, void and of no effect whatsoever.

(2) To consider the petitioner's case for releasing the monthly benefits wrongfully withheld during the suspension period i.e. from 18th Sept. 1987 to 27th July, 1988.

(3) To consider the petitioner's case for releasing annual increments wrongfully withheld since 1987 due to wrongful institution of the inquiry.

(4) To consider the petitioner's case for promotion to the higher post from the date from which his immediate juniors were considered for promotion to the higher post but the petitioner's case was not considered due to pending inquiry.

(5) To grant any other appropriate relief/remedy deemed just and proper by the Hon'ble Tribunal in the facts and circumstances of the case."

MR. Anil  
P.K. 27/6/88

violation of principles of natural justice and fair play and thus beyond the jurisdiction of the respondent authorities.

7. Relief Sought :

In view of the facts and grounds mentioned hereinabove, the petitioner prays that the Hon'ble Tribunal may be pleased to:

(1) To quash and set aside the impugned order at Annexures A-2 and A-4 as illegal, unconstitutional, without jurisdiction, null, void and of no effect whatsoever.

(2) To consider the petitioner's case for releasing the monthly benefits wrongfully withheld during the suspension period i.e. from 18th September, 1987 to July 27, 1988.

(3) To consider the petitioner's case for releasing annual increments wrongfully withheld since 1987 due to wrongful institution of the inquiry.

(4) To consider the petitioner's case for promotion to the higher post/ from date from which his immediate juniors were considered for promotion to the higher post but the petitioner case was not considered due to pending inquiry.

(5) To grant any other appropriate relief/remedy deemed just and proper by the Hon'ble Tribunal in the facts and circumstances of the case.

8. Interim Relief, if prayed for :

Pending admission, final hearing and disposal of this application, the Hon'ble Tribunal may be pleased to grant interim relief staying the operation of the impugned orders produced at Annexures A-2 and A-4 to this application.

9. Details of the remedies exhausted :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules by making representation to the concerned authorities as mentioned in the facts of the case, hereinabove.

10. Matter not pending with any other court etc.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Hon'ble Tribunal.

11. Particulars of Bank Draft/Postal Order in respect of the Application fee :

1. No. of the Indian Posal Order : 194261
2. Name of the Issuing Post Office: High Court Post office
3. Date of issue of Postal Order : 20-11-89
4. Post office at which payable : High court P.O.

12. Details of Index :

An index in duplicate containing the details of the documents to be relied upon is enclosed.

**13. List of enclosures :**

1. Annexures A-1 to A-5 as mentioned in the index.
2. Vakalatnama.
3. Postal Order in respect of the Appln. fee.

**IN VERIFICATION :**

I, Jaidev Mallick, S/o Late Baradkanta Mallick, working as Dy. C.I.T.(OSD), under respondent no.2 authority, resident of Ahmedabad, do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Ahmedabad

*Jaidev*  
(Signature of the Applicant)

Date: 20-11-89

*M R Anand*  
Applicant's Advocate.

**TO:**

The Registrar  
CAT Addl Bench  
at Ahmedabad.

Filed by Mr. .... *M R Anand*  
Learned Advocate for Petitioners  
with second set & .... spares  
copies copy served/not served to  
other side

*O. J. Anand*  
Dated 22/11/89 Dy Registrar C.A.T.(P)  
A'bad Bench

F.NO.S- 14011/45/87 V & L.  
GOVERNMENT OF INDIA.  
MINISTRY OF FINANCE.  
DEPARTMENT OF REVENUE.

NEW DELHI, DATED THE 27TH JULY, 1988.

ORDER

Whereas an order placing Shri J. Mallick, Deputy Commissioner of Income Tax, Bombay under suspension was made by the President on 8.9.1987.

Now, therefore, the President, in exercise of the powers conferred by clause (c) of sub-rule (5) of rule 10 of the Central Civil Services (Classification Control and Appeal) rules, 1965 hereby revokes the said order of suspension with immediate effect.

(By order and in the name of the President)

(P.R. REGD. JURR)  
UNDER SECRETARY TO THE GOVERNMENT OF INDIA

✓ Shri J. Mallick,  
Deputy Commissioner of Income Tax,  
Bombay.

Through The Chief Commissioner of Income Tax,  
Bombay.

free copy  
M. K. Anand  
ad

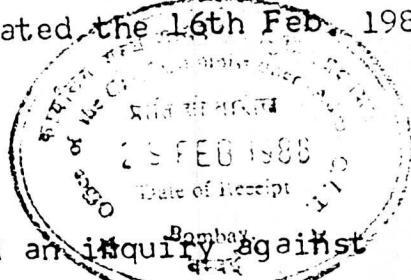
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F. NO. C-14011/45/87 V & L.

GOVERNMENT OF INDIA.  
MINISTRY OF FINANCE.  
DEPARTMENT OF REVENUE.  
CENTRAL BOARD OF DIRECT TAXES.

New Delhi, dated the 16th Feb. 1988.

MEMORANDUM



The President proposes to hold an inquiry against Shri Jaidev Malik, Assistant Commissioner of Income Tax, under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Shri Jaidev Malik is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri Jaidev Malik is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not

appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him *ex parte*.

5. Attention of Shri Jaidev Malik is invited to Rule 20 of the Central Civil Services (Conduct), Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Jaidev Malik is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Central Civil Services (Conduct) Rules, 1964,

6. The receipt of the Memorandum may be acknowledged.  
(By order and in the name of the President).

(PK)  
(P.R. RWI KUMAR)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

To

✓Shri Jaidev Malik,  
Assistant Commissioner of Income-tax,

Through The Chief Commissioner (Admn.) &  
Commissioner of Income Tax, Bombay.

Copy to :-

1. The Chief Commissioner of Income-tax (Admn.) Bombay.
2. Director, Central Vigilance Commission, No. 3  
Dr. Rajendra Prasad Road, New Delhi-110001, with reference  
from Central Vigilance Commission's U.O. No. RIT 83 dated  
30.11.87.
3. Director of Inspection (Vigilance) New Delhi.

Q15  
(P.R.RAVI KUMAR)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

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ANNEXURE I

STATEMENT OF ARTICLES OF CHARGES FRAMED  
AGAINST SHRI JAIDEV MALIK, ASSISTANT  
COMMISSIONER OF INCOME TAX, BOMBAY  
PRESENTLY UNDER SUSPENSION.

ARTICLE I

That the said Shri Jaidev Malik while functioning as Inspecting Assistant Commissioner of Income-tax Companies Range II, Bombay, during the period July 1985 to January 87 caused undue and improper delay in granting approval for issue of refunds of Income Tax in several cases. He has, therefore, violated the provision of Rule 3(1)(i) & 3(1)(ii) of Central Civil Services (Conduct) Rules, 1964.

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ANNEXURE II

STATEMENT OF IMPUTATION OF MISCONDUCT OR  
MISBEHAVIOUR IN SUPPORT OF ARTICLE OF CHARGE  
FRAMED AGAINST SHRI JAIDEV MALIK, ASSISTANT  
COMMISSIONER OF INCOME TAX, BOMBAY, PRESENTLY  
UNDER SUSPENSION.

ARTICLE I

The said Shri Jaidev Malik was posted as Inspecting Assistant Commissioner of Income-tax, Companies Range-II, Bombay during the period July 1985 to 13.1.87. One of the functions of an Inspecting Assistant Commissioner is to grant approval to the Income Tax Officers of his Range for issuing refund exceeding Rs. 1 lakh arising from the assessments completed by the Income Tax Officers under the Income Tax Act 1961. This is an administrative and non-statutory function, the main purpose of which, is to prevent the possibility of issue of large refunds against bogus or fictitious challans. Since this is a post-assessment function, the Inspecting Assistant Commissioner, has, as such, no role in the computation of the income of the concerned assessee. His primary responsibility is limited to ensuring the existence & the genuineness of the challans for payment of advance tax and tax deduction certificates, the correctness of the credit given for the pre-paid tax and the arithmetical accuracy of the resulting refund. In cases where an Inspecting Assistant Commissioner during the course of the checking of refunds comes across material to show that the assessment order containing the computation of the total income was itself erroneous, the right & proper course of action for him is to move the Commissioner of Income Tax for permission to withhold the refund U/S 241 and or for cancellation of the assessment order U/S 263 of the Income Tax Act. The Inspecting

Assistant Commissioner himself has no power, statutory or otherwise, either to cancel or modify the assessment order already passed or to withhold the refund. The Central Board of Direct Taxes, by instruction No. 179 dated 8.6.70, No. 834 dated 15.5.75, No. 912 dated 14.1.76 and No. 1647 dated 11.9.85, have emphasized the importance of timely issue of refunds in all cases and have also stated that any unjustified delay on the part of any official would be suitably dealt with. In fact one of the duties of the Inspecting Assistant Commissioner is to ensure that there is no unjustified delay in the issue of refunds in his Range.

2. Records show that in the following cases of the Companies Range-II, Bombay, Shri Malik caused undue and unjustifiable delay in giving his administrative approval for issue of refunds exceeding Rs. 1 lakhs.

2.1. M/s Skydome Shipping Co., S.A.

In this case, the Income Tax Officer, Companies Circle II(1), Bombay, had proposed a refund of Rs. 2,24,844/- for Assessment Year 76-77. The then Inspecting Assistant Commissioner Shri D. Agarwala had asked the Income Tax Officer to recheck the computation of the refund. The Income Tax Officer's reply reiterating the correctness of the proposed refund was pending when Shri Malik took over as Inspecting Assistant Commissioner Companies Range-II, Bombay, in July 85. The relevant file of the office of Inspecting Assistant Commissioner relating to 'Approvals of Refunds' was put up to Shri Malik on 15.7.85 in connection with another refund in the case of one M/s Norasia Shipping Lines Ltd.. At this stage Shri Malik directed that assessment records of M/s Skydome Shipping Co, may be called. However

when the relevant assessment records were put up before him, he gave no written directions. The records thereafter show that the Income Tax Officer submitted a letter dated 19.7.85 stating that the original assessment orders U/S 172(4) in this case, were not passed at Bombay and are therefore not available in his circle. Apparently this letter was sent by the Income Tax Officer in response to certain oral queries of Shri Malik. The file was again put up before Shri Malik by his office on 19.7.85. However, he gave no directions on the same. Ultimately a letter was sent by him to the Income Tax Officer only on 25.10.85 asking the Income Tax Officer to obtain the original challans relating to pre-payment of taxes, thereby dropping the initial query regarding original orders U/S 172(4). There is no indication on record as to why the additional query could not be raised in the first instance itself. The Income Tax Officer replied on 29.10.85, stating that the original challans were already available on the assessment records. However, the matter remained pending with Shri Malik for no apparent reason till he granted formal approval on 11.12.85. Thus Shri Malik unduly & unjustifiably delayed giving necessary approval in this case for about 5 months between 15.7.85 and 11.12.85 even though the necessary information for taking appropriate decision was already before him.

2.2 M/s John Fleming & Co, Ltd.

In this case, a proposal was submitted by the Income Tax Officer Companies Circle-II(9), Bombay on 15.4.85, seeking approval for issue of a refund of Rs. 6,84,482/-

for the Assessment Year 1984-85. The then Inspecting Assistant Commissioner had asked the Income Tax Officer to recheck certain matters. The Income Tax Officer replied on 21.6.85 reaffirming his earlier proposal. The Income Tax Officer's reply was seen by Shri Malik on 2.7.85 who by then had taken one charge of the Range but he gave no directions. On 8.8.85 he recorded his approval for the issue of refund on the Income Tax Officer's letter itself. The formal letter of approval was sent on 12.8.85. Thus Shri Malik caused undue and unnecessary delay in disposal of a routine matter, by about 1½ months between 2.7.85 and 12.8.85.

2.3. M/s Phalton Sugar Works Ltd. :-

In this case the Income Tax Officer, Companies Circle-II(3) Bombay, had submitted a proposal dated 8.4.85 for issue of a refund of Rs. 5,20,317/- for the Assessment Year 80-81. The relevant file was put up before the Inspecting Assistant Commissioner on 21.6.85 recommending grant of approval. On 15.7.85 when the file relating to approval of refund was put up before Shri Malik in connection with approval of another refund in the case of M/s Norasia Shipping Lines Ltd., Shri Malik gave no directions in respect of that case and instead asked his office to put up the assessment records of M/s Phalton Sugar Works Ltd. The concerned Income Tax Officer submitted a further letter on 17.7.85 stating that it had since come to his notice that another company M/s Swastik Textile Mills Ltd. had been amalgamated with M/s Phalton Sugar Works Ltd. and that there is an existing demand of

Rs. 1,36,258/- in the case of M/s Swastik Textile Mills Ltd. which could be recovered from the refund payable to M/s Phalton Sugar Works Ltd. The Income Tax Officer therefore, modified his earlier proposal to the extent that out of refund of Rs. 5,20,317/- payable to M/s Phalton Sugar Works Ltd., an amount of Rs. 1,36,258/- would be adjusted against the tax due from M/s Swastik Textile Mills Ltd. and only the balance of Rs. 3,84,059/- would be refunded to M/s Phalton Sugar Works Ltd. Shri Malik however took no action till 6.11.85 when he ultimately gave approval to the above proposal. Thus, Shri Malik caused an undue and unjustifiable delay of about 4 months between 15.7.85 and 6.11.85. in disposing of the matter.

2.4. M/s Norasia Shipping Lines Ltd., GMBH, West Germany

In this case a proposal was received from the Income Tax Officer Companies Range-II(1), Bombay, on 28.6.85, seeking approval for refund of Rs. 2,05,517/- for the Assessment Year 84-85 in this case. The relevant file was put up before Shri Malik by his office on 15.7.85 recommending grant of approval. Shri Malik gave no directions as regards this proposal and instead called for assessment records of two other companies M/s Skydome Shipping Co. Ltd. and M/s Phalton Sugar Works Ltd. where also similar proposals were pending. The matter relating to M/s Norasia Shipping Lines Ltd. remained pending before Shri Malik for over 7 months till the Income Tax Officer sent a reminder on 27.2.86. Thereafter on 4.3.86 Shri Malik sent a letter to the Income Tax Officer asking him to obtain the original challans. The Income Tax Officer

replied on 6.3.86 stating that he has verified the tax payment from the cash book where entries of tax payments of Rs. 6,60,341/- were duly recorded. Thereafter Shri Malik granted approval on 11.3.86 for a refund of Rs. 2,05,376/- Thus Shri Malik caused an unnecessary and unjustified delay of over 7 months between 15.7.85 and 4.3.86 in the disposal of a routine matter.

2.5. M/s Empee Corporation Ltd.

In this case a proposal for issue of refund of Rs. 1,37,616/- was received from the Income Tax Officer Companies Circle II(8), Bombay on 8.11.85 for the Assessment Year 84-85. On 25.11.85 Shri Malik asked the Income Tax Officer to first adjust the tax demands outstanding against the assessee under the Sur-tax Act and to resubmit his proposal thereafter. Accordingly, a revised proposal for refund of Rs. 1,25,455/- was submitted by the Income Tax Officer on 10.2.86. The relevant file was put up before Shri Malik on 12.2.86 itself but he gave directions, according his approval to issue of refund, only on 17.4.86. Thus, the matter remained pending before Shri Malik for over 2 months between 12.2.86 and 17.4.86 thereby resulting in an unjustified and undue delay. Even ~~otherwise since the original proposal of refund (Rs. 1,37,616/-) was in itself justified, Shri Malik could have in the first instance itself approved the proposal subject to the adjustment of the outstanding Sur-tax demand.~~

2.6. M/s Perfect Gems Exports Pvt. Ltd.

In this case, the Income Tax Officer Companies Circle-II (3) Bombay, had sought approval of the Inspecting Assistant Commissioner for issue of refund of Rs. 1,54,171/- for the Assessment Year 83-84. The Income Tax Officer's proposal was

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received in the office of the Inspecting Assistant Commissioner on 29.1.86 and the relevant file was put up before Shri Malik, by his office on 12.2.86 recommending grant of approval. However Shri Malik gave no directions on the same and the matter remained pending till his transfer on 13.1.87. The assessee company made a complaint on 28.1.87 to the Inspecting Assistant Commissioner for non-issue of the refund order and also claimed interest for the delay. The approval was ultimately given by Shri Malik's successor Inspecting Assistant Commissioner on 19.2.87. Thus Shri Malik caused an unjustified and undue delay of 11 months between 12.2.86 and 13.1.87 in disposal of a routine matter. The delay also resulted in avoidable payment of interest of Rs. 14,087/- to the assessee.

2.7. M/s Hapag Llyod A.G.

In this case the Income Tax Officer Companies Circle II(1) Bombay, had sought approval of the Inspecting Assistant Commissioner for issue of refund of Rs. 2,73,384/- for the Assessment Year 83-84. The Income Tax Officer's proposal was received in the office of the Inspecting Assistant Commissioner on 6.2.86 and the relevant file was put up before Shri Malik by his office on 12.2.86 recommending grant of approval. However Shri Malik gave no direction on the same. Ultimately the refund was approved by Shri Malik on 17.4.86. Thus Shri Malik caused an undue and unjustified delay of two months between 16.2.86 and 17.4.86 in disposal of this matter.

2.8. M/s Mercantile Shipping Co. Ltd.

In this case, the Income Tax Officer Companies Circle II(1) Bombay had submitted a proposal on 10.7.86 for issue of a refund of Rs. 1,41,466/- for the Assessment Year 83-84.

The relevant file was put up before Shri Malik by his office on 23.7.86 recommending grant of approval. However Shri Malik did not give any direction on the same. Subsequently on 13.8.86, he sent a letter to the Income Tax Officer requiring him to call and verify the General Manifest, the Bills of Lading and the ledger account of the Principals etc. This was perhaps to check whether the assessee company had earned any income on inland freight. The Income Tax Officer gave a reply on 22.10.86 stating that the matter has been rechecked and that the assessee has not earned any additional freight and therefore approval may be given for issue of the refund as originally proposed. Thereafter Shri Malik issued a further letter dated 10.11.86 to the Income Tax Officer requiring him to obtain a copy of the ledger account of the assessee as appearing in the books of its Principals. The Income Tax Officer replied on 30.12.86 stating that the ledger account has been obtained and placed on record. At this stage, Shri Malik wrote a further letter dated 6.1.87 asking the Income Tax Officer to call for the original orders relating to provisional assessments U/S 172(4) and the Freight Manifest. There is no indication on the file as to why Shri Malik considered an examination of these documents necessary even though these related to computation of income and did not have a bearing on the genuineness of the refund. There is also no indication as to why all these queries could not be raised together in the first instance itself. The assessee in the meanwhile lodged a complaint dated 17.11.86 before the Commissioner of Income Tax,

Bombay City II, Bombay, through its authorised representatives, stating that although the assessment has been completed as far back as 20.6.86, the refund had been held up for want of approval of the Inspecting Assistant Commissioner. It also stated that the representative of the company had personally met the Inspecting Assistant Commissioner in this connection but without any results. The approval was not granted by Shri Malik till his transfer on 13.1.87 and the same was ultimately granted by his successor on 21.1.87. Thus Shri Malik unnecessarily and unjustifiably delayed the matter for about 6 months between 23.7.86 and 13.1.87 i.e. the date of his transfer. The circumstances of this case also suggest that in delaying the matter Shri Malik acted with a dishonest motive. The queries raised by Shri Malik vide his letter dated 13.8.86, 10.11.86 and 6.1.87 were irrelevant to the limited issue of approval of the proposed refund, as these related to the computation of total income of the assessee. Since the regular assessment had already been completed, even if Shri Malik was of the opinion that any income liable to tax had escaped assessment, the only proper course of action for him was to make a reference to the Commissioner of Income-tax proposing withholding of the refund and cancellation of the assessment order. He did not do so. In any case Shri Malik had no authority to withhold or delay the issue of refund order for almost six months after the completion of the assessment.

2.9. M/s Ind Experts Ltd.

In this case the Income Tax Officer, Companies Circle II(4), Bombay had submitted a proposal on 21.8.86 seeking approval of the Inspecting Assistant Commissioner for issue

of refund of Rs. 12,49,094/- which had arisen as a result of a provisional assessment order U/S 141 A for Assessment Year 85-86 passed on 26.7.85. A provisional assessment is completed in cases where there is a claim of refund and the regular assessment is likely to get delayed. While making a provisional assessment the Income Tax Officer has no power to make any addition to the disclosed income except correction of apparent errors. The proposed refund of Rs. 12,49,049/- was on the basis of the returned income itself and the Income Tax Officer had duly mentioned that this was a case of provisional assessment. Shri Malik recorded a marginal note on the Income Tax Officer's letter, at the dak stage itself, directing his inspector to call for assessment records. The inspector put up a note on 25.8.86 recommending approval for issue of the proposed refund. Shri Malik issued no direction on this recommendation. Instead he made a further undated marginal noting on the Income Tax Officer's letter which reads "How it has been delayed so long? The file was not put up before me. The inspector should have reminded. I cannot keep everything in mind." This note is undated. Immediately below this note, Shri K.K. Thankappan, Inspector of the Inspecting Assistant Commissioner's office has made a noting which reads 'received back on 5.12.86.' Thus it appears that after the relevant file was put up before Shri Malik on 25.8.86 he took out the Income Tax Officer's proposal from the file and returned the same to his Inspector only on 5.12.86. In order to cover up the long delay, Shri Malik made an undated noting extracted above. This is established

from the signed and dated note of the concerned inspector. Records further show that Shri Malik made another undated noting on the order sheet of the relevant file of his office to call an explanation of the Income Tax Officer for the delay between completion of the assessment order on 26.7.85 and submission of the proposal on 21.8.86. The Income Tax Officer by a letter dated 12.12.86, offered certain explanation. This letter opens with the sentence, 'yesterday you orally called my explanation .....'. Thus, it is clear that the explanation of the Income Tax Officer was called by Shri Malik orally on 11.12.86 and the above undated order sheet noting was also made by Shri Malik on or about 11.12.86. Ultimately the approval was communicated to the Income Tax Officer on 15.12.86. Thus the matter relating to grant of refund of Rs. 12.49 lakhs on completion of a provisional assessment was unduly and unjustifiably delayed by Shri Malik for about 4 months between 25.8.86 and 15.12.86, in circumstances that suggest a dishonest motive on his part.

#### 2.10. M/s Durga Chemicals Corporation Pvt. Ltd.

In this case a proposal for issue of refund of Rs. 3,60,816/- for the Assessment Year 84-85 was submitted by the Income Tax Officer, Company Circle-II(10), Bombay on 9.10.86. On 10.11.86 Shri Malik wrote a letter to the Income Tax Officer asking him to verify whether the company had deducted tax on the interest paid by it to certain other persons. This matter was totally irrelevant as far as the question of granting approval for issue of the refund to the assessee was concerned. The Income Tax Officer replied on

21.11.86 stating that tax of Rs. 7,321/- was duly deducted by the assessee from the interest paid by it and was also deposited in government account. Thereafter approval was granted by Shri Malik on 26.11.86. Thus, in this case Shri Malik caused an undue and unjustifiable delay of about 1½ months in disposal of a routine matter by raising an irrelevant query.

2.11. M/s Associated Auto Parts Pvt. Ltd.

In this case the Income Tax Officer Companies Circle II(10) Bombay, had submitted a proposal on 9.10.86 for issue of refund of Rs. 1,61,259/- for the Assessment Year 1984-85. It appears that this letter of the Income Tax Officer was taken out by Shri Malik at the dak stage itself and returned to the concerned inspector of his office on 12.12.86. This is borne out by the signed noting dated 12.12.86 made by Shri K.K. Thankappan, Inspector on the Income Tax Officer's proposal itself. The relevant file was put up before Shri Malik by his office on 12.12.86 with the recommendation of the Inspector concerned that necessary approval may be given. Shri Malik gave no directions on the note-sheet. He however wrote on the Income Tax Officer's letter itself that the approval is given. Accordingly formal approval was communicated to the Income Tax Officer on 12.12.86. Thus Shri Malik caused undue and unjustifiable delay in the disposal of this matter between 9.10.86 and 12.12.86. The circumstances of this case also indicate a dishonest motive on the part of Shri Malik.

2.12. M/s The Indosal Chemical Corporation Ltd.

In this case, the Income Tax Officer Company Circle-II(9),

Bombay, had submitted a proposal on 10.10.86 seeking approval for issue of refund of Rs. 2,83,477/- for the Assessment Year 84-85. It appears that the Income Tax Officer's proposal was taken out by Shri Malik on 10.10.86 when it was put up before him at the dak stage, and that it was returned by him to his office on 4.12.86 with a marginal note "put up with old folders". This is borne out by the signed noting dated 4.12.86 of Shri K.K. Thankappan, Inspector of his office on this letter saying that "receive on 4.12.86". Thereafter the letter was put up before Shri Malik by his office together with the relevant file on the same day i.e. 4.12.86 with the recommendation to grant necessary approval. Shri Malik made a note on the ordersheet to call for old records. He also made a second marginal note on the Income Tax Officer's letter, which reads "It is seen that the file was misplaced and was not put up before 4.12.86 Inspector to call for old records and expedite the matter." Thereafter the file was again put up before Shri Malik on 9.12.86 by his office with the remark that the records of the earlier years are in the Audit. Shri Malik made no directions on this and instead granted approval on 12.12.86, apparently, without seeing the earlier records. Apparently therefore, reference to old records was really not necessary for disposing of the matter under consideration and the query in this regard was uncalled for. Further the second marginal note, made by Shri Malik, (on the Income Tax Officer's letter) to the effect that the file was misplaced, was <sup>the</sup> ~~incorrect~~ <sup>Assessment</sup> ~~Record and~~ ~~not~~ ~~files or~~ ~~here~~ issued from the same file between 10.10.86 and 4.12.86 to claimed various Income Tax Officer's. These bear the signatures

of Shri Malik himself. It therefore appears that the second marginal note was recorded by Shri Malik to place on record some explanation for the long delay caused by him and because the concerned Inspector Shri Thankappan had made a noting saying that the Income Tax Officer's letter was received by him on 4.12.86. The noting of Shri Malik in this regard is not borne out by the record. Thus an undue and unjustifiable delay of over two months was caused by Shri Malik in disposal of this matter in circumstances which suggest a dishonest motive on the part of Shri Malik.

2.13 M/s Detroit Investments and Finance Pvt, Ltd.  
In this case, the Income Tax Officer Companies Circle-II (9), Mumbai, had submitted a proposal on 10.10.86 seeking approval of the Inspecting Assistant Commissioner for issue of a refund of Rs. 1,11,504/- for the Assessment Year 86-87. Records show that in this case also the proposal of the Income Tax Officer was taken out by Shri Malik at the dak stage itself and was returned to the concerned Inspector of the office of Inspecting Assistant Commissioner only on 4.12.86. This is borne out by the signed and dated noting of his Inspector Shri K.K. Thankappan on the Income Tax Officer's. The relevant file was put up before Shri Malik by his office on 12.12.86 with the recommendation that the approval may be granted. Shri Malik gave no direction on the order-sheet. However, a formal approval was given by Shri Malik by letter dated 15.12.86. Thus in this case also an undue and unjustifiable delay of over two months was caused by Shri Malik in circumstances which suggest a dishonest motive on his part.

2.14. M/s Atlantic Rhedrei F & W Joch, West Germany

In this case the Income Tax Officer Companies Circle-II (7), Bombay had submitted a proposal on 27.10.86 seeking approval for issue of refund of Rs. 1,75,911/- for the Assessment Year 85-86. Shri Malik wrote a letter dated 28.10.86 asking the Income Tax Officer to obtain a copy of the ledger account of the assessee as appearing in the books of account of its Indian agents. The Income Tax Officer replied on 29.12.86 that a copy of the ledger account has been placed on record. Thereafter on 2.1.87 Shri Malik made a marginal note on the Income Tax Officer's letter itself requiring him to call the provisional assessment orders U/S 172(4) in original and the Freight Manifest etc. There is no indication on records as to why reference to these documents was necessary for the limited purpose of granting approval for issue of the refund or why these documents also could not be called in the first instance itself on 28.10.86. The assessee, through its Indian agents James McIntosh and Company Pvt. Ltd., made a complaint dated 7.1.87 to the Commissioner of Income-tax, Bombay City-II, Bombay stating that the refund was being withheld without any valid reason and unnecessary enquiries were being made months after the completion of assessment. Shri Malik was transferred from this Range on 13.1.87 and the refund was ultimately issued by the successor Inspecting Assistant Commissioner, on 21.1.87. The records show that the queries raised by Shri Malik vide his letter dated 28.10.86 and 2.1.87 were irrelevant to the limited question of granting approval to the issue of refund. These queries related to

determination of the total income enquiries. If Shri Malik was really of the view that the assessment order itself was erroneous and prejudicial to the interest of the revenue on account of failure of the Income Tax Officer to make these enquiries, the only proper course of action for him was to make a reference to the Commissioner of Income-tax for withholding the refund and cancelling the assessment order. He had no authority or justification to either withhold the refund or to make irrelevant enquiries as has been done by him. The fact that the refund was duly approved by the successor Inspecting Assistant Commissioner also shows that the queries raised by Shri Malik were unjustified and irrelevant. Thus Shri Malik has caused undue and unjustifiable delay between 28.10.86 & 13.1.87 in disposal of this case. Circumstances of the case suggest a dishonest motive on the part of Shri Malik in dealing with the matter.

3. Records further show that in various other similar cases, of the same Range, decided by Shri Malik during the same period, approvals on similar proposals of the Income Tax Officer's were given by him within a few days of the receipt of the proposals. Particulars of some of these cases are as under :-

Name of the assessee	Amount of refund	Date of receipt of proposal.	Date of grant of approval.
1.	2.	3.	4.
M/s Malhotra Silk Mills Pvt. Ltd.	Rs.1,95,300/-	14.8.85	2.9.85
M/s Stellar Construction Pvt. Ltd.	Rs.1,92,693/-	11.9.85	20.9.85
Sh. Pehlaj B. Bajaj	Rs.1,35,447/-	2.1.86	21.1.86

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1.	2.	3.	4.
Sh. Pehlaj B. Bajaj	Rs.1,11,308/-	1.9.86.	4.9.86.
M/s Dadlani Realtors Pvt. Ltd.	Rs.5,04,990/-	14.1.86.	21.1.86.
M/s Union Land & Building Society Ltd.	Rs.7,52,500/-	7.1.86.	21.1.86.
M/s Empress Tin Factory Pvt. Ltd.	Rs.2,89,464/-	17.2.86.	21.2.86.
M/s Sahajanand Engg. Works Pvt. Ltd.	Rs.1,35,259/-	26.8.86.	28.8.86.
M/s Manek Lal Scientific Research Foundation	Rs.2,02,320/-	29.12.86.	5.1.87.
M/s Troika Processes Pvt. Ltd.	Rs.1,46,521/-	29.12.86.	5.1.87.

4. From the above facts and circumstances it emerges that in the 14 cases, mentioned in foregoing paragraph 2, Shri Malik caused undue and unjustifiable delays in disposing refund claims of large amounts of several Indian and Foreign Companies by either not giving necessary directions in a prompt and proper manner or by raising wholly irrelevant and untenable queries. He has, therefore, violated standing instructions of the Central Board of Direct Taxes, regarding prompt and expeditious issue of Refunds. As per Section 119(1) of the Income Tax Act 1961 Shri Malik was duty-bound to follow these instructions. He has, therefore, failed to maintain devotion to duty as required U/R 3(1)(ii) of the Central Civil Services (Conduct) Rule 1964.

5. Further, records show that although Shri Malik caused undue and unjustifiable delays of varying periods in the cases mentioned in Paragraph 2 here in above, in

similar cases listed in Paragraph 3, Shri Malik accepted similar proposals of the Income Tax Officer's without raising any queries. Further, the facts and circumstances on record suggest that the delays caused by Shri Malik were also for a dishonest motive, and that Shri Malik attempted to manipulate records in certain cases to cover up/justify delays. He has therefore, failed to maintain absolute integrity as required U/R 3(1)(i) of the Central Civil Services (Conduct) Rules 1964.

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ANNEXURE III

LIST OF DOCUMENTS & RECORDS BY WHICH ARTICLES OF CHARGES OF MISCONDUCT/MISBEHAVIOUR AGAINST SHRI J NIDEV MALIK, ASSISTANT COMMISSIONER OF INCOME TAX, BOMBAY (NOW UNDER SUSPENSION) ARE PROPOSED TO BE SUSTAINED.

File F.No. CR II/ Refund of the office of Inspecting Assistant Commissioner, Companies Range II Bombay on the subject of 'Refund exceeding Rs. 1 lakh - Inspecting Assistant Commissioner's approval - from 21st November, 1983 onwards', alongwith note-sheet pages 1 to 65, and in particular containing following correspondence :

1. M/s Skydome Shipping Co. S.A. :-
  - i) Proposal dated 2.4.85 & report dated 25.5.85 of Income Tax Officer C.C. II(1) regarding refund of Rs. 2,24,844/-.
  - ii) Further report dated 19.7.85 of the Income Tax Officer to the Inspecting Assistant Commissioner.
  - iii) Reply of Income Tax Officer dated 29.10.85 in response to Inspecting Assistant Commissioner's letter dated 25.10.85.
  - iv) Approval letter dated 11.12.85 of the Inspecting Assistant Commissioner.
  - v) Notesheet page 20.
2. M/s John Fleming & Co. :-
  - i) Proposal dated 15.4.85 & report dated 21.6.85 of the Income Tax Officer C.C. II(a) regarding refund of Rs. 6,84,482/-.
  - ii) Report dated 21.6.85 of the Income Tax Officer to the Inspecting Assistant Commissioner.

iii) Letter of approval dated 12.8.85 of the Inspecting Assistant Commissioner to the Income Tax Officer.

iv) Note sheet on page 43 (classical mechanics) (a) (i),

3. M/s Phaiton Sugar Works Ltd. :-

3. M/s Phaiton Sugar Works Ltd. i) Proposal dated 8.4.85 of Income Tax Officer C.C.

II(3) for refund of Rs. 5,20,317.

ii) Letter dated 17.7.85 of the Income Tax Officer modifying earlier proposal.

iii) Notesheet page 39, 4D, 3rd point of bridge ex. 2

4. M/s Norasia Shipping Lines Ltd. :-

i) Proposal of Income Tax Officer C.C. II(1) for refund of Rs. 2,05,517/- received on 28.6.85.

iii) Reminder dated 27.2.86 of the Income Tax Officer.

to the Inspecting Assistant Commissioner.

iii) Letter dated 4.3.86 of the Inspecting Assistant Commissioner to Income Tax Officer.

iv) Report dated 6.3.86 of the Income Tax Officer to

the Inspecting Assistant Commissioner.

v) Approval letter dated 11.3.86 of the Inspector  
Assistant Commissioner.

vi) Notesheet pages 38, 39, 40

5. M/s Empee Coron. Pvt. Ltd. :-  
i) Removal of Income Tax Officer C.G. II(8) for

1) Proposal of Income Tax Officer S.O. II(S) for  
refund of Rs. 1,37,616/- received on 8.11.85.

ii) Letter of Inspecting Assistant Commissioner to  
Income Tax Officer sent on 25.11.85

iii) Revised proposal of the Income Tax Officer

received on 11.2.86.

iv) Approval letter dated 17.4.86 of the Inspector  
Assistant Commissioner.

v) Notesheet pages 42, 45.

-6.

M/s Perfect Gems Exports Pvt. Ltd. :-

- i) Proposal of Income Tax Officer C.C.II(3) for refund of Rs. 1,54,171/- received on 29.1.86.
- ii) Complaint dated 28.1.87 of the assessee addressed to Inspecting Assistant Commissioner.
- iii) Approval letter dated 19.2.87 issued by successor Inspecting Assistant Commissioner.
- iv) Notesheet pages 44.

7.

M/s Hapag Lloyd A.G. :-

- i) Proposal of Income Tax Officer C.C. II(1) for refund of Rs. 2,73,384/- received on 6.2.86.
- ii) Approval letter dated 17.4.86 of the Inspecting Assistant Commissioner.
- iii) Notesheet page 45.

8.

M/s Mercancile Shipping Co. Ltd. :-

- i) Proposal of Income Tax Officer C.C. II(1) for refund of Rs. 1,41,466/- submitted on 19.7.86.
- ii) Letter dated 22.10.86 of the Inspecting Assistant Commissioner to Income Tax Officer.
- iii) Report dated 22.10.86 of the Income Tax Officer to Inspecting Assistant Commissioner.
- iv) Letter dated 10.11.86 of the Inspecting Assistant Commissioner to Income Tax Officer.
- v) Complaint dated 17.11.86 of the assessee addressed to Commissioner of Income Tax B.C.II, Bombay.
- vi) Report dated 30.12.86 of the Income Tax Officer to the Inspecting Assistant Commissioner.

vii) Letter dated 6.1.87 of the Inspecting Assistant Commissioner to Income Tax Officer.

viii) Approval letter dated 21.1.87 of successor Inspecting Assistant Commissioner.

ix) Notesheet page 47.

9. M/s Ind. Exports Ltd. :-

- i) Proposal of Income Tax Officer C.C. II(4) received on 21.8.86 for refund of Rs. 12,49,094/-.
- ii) Letter dated 12.12.86 of the Income Tax Officer to Inspecting Assistant Commissioner.
- iii) Approval letter dated 15.12.86 of the Inspecting Assistant Commissioner.
- iv) Notesheet page 50A.

10. M/s Dura Chemicals Corp. Pvt. Ltd. :-

- i) Proposal dated 9.10.86 of Income Tax Officer C.C. II(1) for refund of Rs. 3,60,816/-.
- ii) Letter dated 10.11.86 of the Inspecting Assistant Commissioner to Income Tax Officer.
- iii) Report dated 21.11.86 of the Income Tax Officer to Inspecting Assistant Commissioner.
- iv) Approval letter dated 26.11.86 of the Inspecting Assistant Commissioner.

11. M/s Associated Auto. Parts Ltd. :-

- i) Proposal dated 9.10.86 of the Income Tax Officer C.C. II(10) proposing refund of Rs. 1,61,259/-.
- ii) Approval letter dated 12.12.86 of the Inspecting Assistant Commissioner.
- iii) Note sheet page 53.

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12. M/s The Indosal Chemical Corpn. Pvt. Ltd. :-

- i) Proposal dated 10.10.86 of the Income Tax Officer C.C. II(a) for refund of Rs. 2,83,477/-.
- ii) Approval letter dated 12.12.86 of the Inspecting Assistant Commissioner.
- iii) Notesheet page 52.

13. M/s Detroit Investment & Finance Pvt. Ltd.

- i) Proposal dated 10.10.86 of Income Tax Officer C.C. II(9) for refund of Rs. 1,11,504/-.
- ii) Approval letter dated 15.12.86 of the Inspecting Assistant Commissioner.
- iii) Notesheet page 52.

14. M/s Atlantic Rhedrei F & W Joch. :-

- i) Proposal of Income Tax Officer C.C. II(1) received on 27.10.86 for refund of Rs. 1,75,911/-.
- ii) Report dated 29.12.86 of the Income Tax Officer in response to Inspecting Assistant Commissioner's letter dated 28.10.86.
- iii) Inspecting Assistant Commissioner's letter dated 2.1.87 to the Income Tax Officer.
- iv) Letter dated 13.1.87 of the Commissioner of Income Tax B.C. II Bombay enclosing complaint dated 7.1.87 of the assessee.
- v) Approval letter dated 21.1.87 of successor Inspecting Assistant Commissioner.

ANNEXURE IV

LIST OF WITNESSES THROUGH WHOM THE ARTICLES OF  
CHARGE OF MISCONDUCT/MISBEHAVIOUR ON THE PART  
OF SHRI JAIDEV MALIK, ASSISTANT COMMISSIONER OF  
INCOME TAX BOMBAY (UNDER SUSPENSION) ARE PROPOSED  
TO BE PROVED.

1. Shri K.K. Thankappan, Inspector of Income-tax, Bombay.

True copy  
P.M.  
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STATEMENT OF DEFENCE (INTERIM)

26/4/88

(by a letter the CBDT has been  
asked to treat the reply as final)

Brief Reply to the Charge Sheet

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In absence of factual details which will be available only if I am allowed to inspect the records and documents for which I have already prayed to the CBDT, a reply to the charge sheet is prepared from facts mentioned in the same and from my memories.

The Article I is denied categorically as there had been no violation of the provisions of Rules 3(1)(i) and 3(1)(ii). The delay as alleged cannot be the basis for violation as alleged as I have acted entirely within my statutory jurisdiction as an Inspecting Assistant Commissioner of I.T. Company Range II, Bombay. The action was bonafide and within the frame of I.T. Act, 1961 and no directions of CBDT have been violated in discharging my duties as a conscientious official.

In reply to Annexure II, Article I, I have to state that the contention that the approval was no statutory function of the I.A.C. is not based on any facts and contrary to the Provisions of the I.T. Act, Sec. 119 of I.T. Act, 1961 gives powers to the CBDT as well as to the entire hierarchy. I am as much bound by CBDT's Circulars as the I.T.O's are bound by my directives. A look at Chapter XIII of I.T. Act, 1961 will clarify the position that right from CBDT to the Inspectors of Income Tax, all are statutory authorities and they are working as such only. Refund is arising because of Sec. 237 of I.T. Act and the approval or anything connected with the Refund can only be statutory and nothing else. Some action may be 'administrative' but it also must be within the frame work of the statute i.e. I.T. Act, 1961, only. Hence the contention that giving of approval to ITO's for issuing refunds

was only administrative and non-statutory function of the I.A.C. is incorrect and based on misconception of the provisions of the said Act. The approval is not an empty formality and whether the assessment has been completed according to the provisions of the I.T. Act, has also to be looked into by the I.A.C. as he has to deliberate on the matter. His function has not been restricted by any circular/order etc. by CBDT. The Article of charges, Annexure II states that -

"Since this is a post assessment function, the Inspecting Assistant Commissioner, has, as such, no role in the computation of income of the concerned assessee."

This is not the correct position as per the Instruction No. 750 dt. 4th September, 1974 where it is stated that ITO's should obtain prior approval of the IAC. This has been reiterated in DIT Circular No. 11/78-F No Audit-9/77-78/DIT dated 18.2.1978. The para 2 reads as under :

"2. All the Income Tax Officers have to take the prior approval of Inspecting Assistant Commissioner before issue of refund of Rs. 1 lakh and above vide instruction No. 750 dt. 4th Sept., 1974, these refunds need not again be checked by the IAP and SAPS. Obviously the audit points are to be looked into by the IAC only."

Then again the Board's Circular F.No.83/103/66-IT(B) dated 27.1.67 states as under :

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(iv) In all cases, where the audit objection is considered, the explanation of the official or officers concerned should be obtained immediately on the receipt of the objection and suitable action taken. While deciding about the action to be taken against the person responsible for the mistakes the explanation tendered by the officials should be examined by the Commissioner also from the Vigilance angle to see whether malafide is involved and without completing the formality of prior approval of the IAC. It reads as under :-

"The Board desires to impress upon the officers once again the need for attending to refunds claims without delay. Where an assessment order resulting in refund has been passed, the Income Tax Officer should not take credit for it in his registers unless the refund order has been issued. It should be made a practice, as in the past, to issue refund vouchers along with the assessment order or other order sanctioning refund."

In view of the above circular, there cannot be the question of any delay in issuing the approval as the process of assessment cannot be completed unless the Refund Voucher is ready including the prior approval of the IAC or any other formalities. Similarly where is the scope of Sec. 241 and Sec. 263 of I.T. Act when the ITO is prevented from completing the assessment order without preparing the Refund Voucher ?

In the concluding portion of the general remark it is contested that the "Assistant Commissioner himself has no power,

statutory or otherwise, either to cancel or modify the assessment order already passed or to withhold the refund" This is contrary to the Board's Circular mentioned above and the contention is baseless and unwarranted as there cannot be any assessment order at all. As regards the allegation of my disregard of the CBDT's Instructions No.179 dated 8.6.70, No.834 dated 15.5.75, No.912 dated 14.1.76 and No.1647 dated 11.9.85, I have to submit that all these instructions are for expeditious disposal of refund and do not deal with the situation where IAC's approval is involved.

Instruction No.179 relates to prompt disposal refund claims and CIT's are requested to see that refund claims are disposed of without delay and in cases of unjustified delays, appropriate action be taken against the erring officers. Instruction No.834 deals with payment of interest to delayed refund and states that, the Board has decided that the Income-tax Officer will be personally responsible for the delay in issue of refund. The action to be taken against erring is as under :-

- i) an advisory warning to be more careful in future in the 1st instance;
- ii) a character roll warning of the officer concerned persist in delaying issue of refund and not paying interest.

It is clear that the action should have been taken against the ITO only and no drastic action like Suspension or disciplinary action has to be taken at the first instance.

Then Instruction No.912 speaks of the disciplinary action and responsibility of the IAC. Here again it is the Refund Vouchers

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which should not be delayed beyond 7 days and delay beyond should be properly explained. But this is not in supersession of earlier Instruction and not regarding Refund order.

None of the assessments mentioned in the 14 (fourteen) cases were to be barred by limitation as such there was no compulsion also to complete the assessment and enter them into the Demand and Collection Register against the express instructions of the CBDT. The ITO's involved violated the existing instructions and the charge against me has been framed on the basis of an artificial or framed-up delay in giving approval even without trying to fix up the responsibility before framing the charge.

The case-wise reply is made hereunder without consulting the records for the permission of which I have already written to CBDT but no reply has so far, been received by me. I have written to the Chief Commissioner(Admn), Bombay also on the same date i.e. 14th March, 1988 but no reply has been received. My financial position is so bad that I cannot move out to Bombay personally as no pay/subsistence Allowance has been paid to me since August, 1987. As the matter is old and I am preparing the reply entirely depending on my memory, the reply is subject to modification, rectification etc. if needs be in future on my verification of records and documents mentioned in the charge.

2.1 M/s. Skydome Shipping Co. SA

The refund is for the Assessment Year 1976-77 and the matter was pending before the then Inspecting Assistant Commissioner Shri D. Agarwala (now CIT, Calcutta). The assessment for A.Y. 1976-77 should have been barred by limitation by 1978-79 as per limitation

U/S. 153 of I.T. Act, 1961. How the refund was pending till 1985-86, is a mystery and the charge is silent about the date of reference by the ITO to IAC. It conveniently states only the date of 15.7.85 when the matter was allegedly put up before me. Why the refund was pending since 1978-79, the time-barring year for the same assessment, no light has been thrown. How much time it was lying in the IAC's office before my taking over, is also not mentioned. How much time my Predecessor has taken already is also conveniently avoided. This shows the biased nature of the charge and the omission of vital information necessary for penalising or doing justice.

There is another important point regarding the assessment of Non-resident Shipping Lines U/S 172(4). It appears that the said assessment U/S. 172(4) has been made not at Bombay, it is not mentioned where the said assessment is done. The taxes also have been paid to that place only and the original challans must have been with the ITO who completed the assessments U/S. 172(4). These challans cannot be with ITO(1), Company Circle II, Bombay, who has done only the final assessment U/S. 172(7) and referred the matter of refund to the IAC. Now, I feel the challans mentioned by the I.T.O. must have been assessee's copies only and without verification of the Cash Book etc. maintained by the ITO who made the assessments U/S. 172(4), no refund should have been issued. The ITO has definitely misled me for asking the approval. The refund may be withdrawn forthwith and the explanation called for

\*from the then ITO(1) Company Circle II, Bombay i.e. Shri N.S. Trivedi, who is now the IAC (Recovery), Bombay. Hence the allegation is baseless and moreover inordinate delay in the same matter has been overlooked in case of the ITO and the then IAC. Shri D. Agarwal.

As regards the putting up of the file of M/s. Norasia Shipping Lines Ltd., it is not clear on what materials, the framer of the charge has depended that the other file also was put up. This point should be cleared that the Inspector was entrusted with the preliminary work and he was responsible for any delay in this matter.

In this connection, the date of submitting the return for A.Y. 1976-77 is important. Normally the assessment should have been completed by 31st March, 1979. How the refund was pending till July, 1985 i.e. more than 6(six) years and no discussion about it in the charge. Had the ITO obeyed the instruction of the Board's Circular, as quoted by me, there would have been no such delay at all. The policy seems to be "Pennywise, pound foolish", when I am being hauled up for delay of about 5 months and others are not questioned for the delay of more than 6(six) years as above. Apart from above, the ITO did not issue the Refund Voucher even after receiving my approval, the same has only been issued by his successor. The matter was brought to the notice of the CIT who ignored it and now the CBDT also has ignored the matter, it appears.

2.2 M/s. John Fleming & Co. Ltd.

As per the charge the gap between 15.4.85 (date of reference to my predecessors) and 21.6.85 (date of reply by ITO) is more than 2 months but the charge is silent about that. The alleged delay of 1½ months at my end is the subject matter of major penalty. This is a matter of regret. Moreover exact reason for delay cannot be ascertained without verification of records.

2.3 M/s. Phalton Sugar Works Ltd.

This is again a case where the proposal was sent to my predecessor on 8.4.85 and the matter allegedly was put up before me on 21.6.85. The gap here is more than 2 months and why no reason is given for the original delay? Apparently the ITO did not take proper care in respect of existing demands before sending it to the IAC for approval. This is highly improper on the part of the ITO and the authorities are silent on this point. The adjustment of the existing demands should have been done first. The IAC cannot rely on the assurance of the I.T.O. In many cases, the adjustment is not properly recorded and as such the CBDT has issued Circular on this point. This is an audit point and it should have been completed before sending the proposal.

In this case carry forward of the past losses incurred by the amalgamating Company i.e. M/s. Swastic Textile Mills Ltd. was postponed as necessary orders were not available from the Govt. U/S. 72A of I.T. Act. Complicated points regarding the provisions of Sec. 72A were involved and the Refund proposal was perfunctory and did not consider these points. I should have taken

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much more time and should have made the I.T.O. to clarify all aspects of amalgamation i.e. great details before approving the refund. This is an instance where it is clearly seen that the approval is not an empty formality only. The delay was most reasonable if all aspects of the case is taken into consideration.

M/s. Norasea Shipping Co. GmbH.

2.4 This another case of non-resident shipping Line belonging to Japan. This non-resident Company is now hit by Sec. 44B of I.T. Act, 1961. w.e.f. 1.4.1976. The tax is simplified and is to be charged at the rate 7½% on both export and import freights.

The ships of the Company are calling at different ports of India and assessments U/S. 172(4) of I.T. Act are made by different ITO's on freight paid or payable to the assessee or to any person on his behalf on account of carriage of passengers, livestock, mail or goods shipped at any port in India for each ship while leaving Indian ports. But so far the earnings on import-freight is concerned, no such check is there and the department is relying on the statement of the Company only. In this case such earning from import freight is negligible in comparison with the export freight. This is suspect as no empty/half-filled ships are calling at our ports as our import cargo is sizeable specially from Japan and these are imports by resident importers only and freight are received or deemed to be received in India. This aspect has been overlooked by the Board and other subordinate authorities. Any move to tax the huge profits had been scuttled by the powerful shipping lobby. The matter also requires collection of facts and modus operandi of the tax evasion. I strongly believe that the said

Company has not shown the correct receipt of the import-freight and other receipts in the form of demurrages, surcharge for delay in clearing, container charges and a host of items. This is a case where before issuing refunds, a thorough investigation should have been made. As regards Sec. 172, it should be amended to cover the import-freight also and NoC should be obtained from the I.T.O. after payment of the tax as is being done in the case of export-freight.

Moreover, I have taken over the charge only in July, 1985 and I required a little time to understand the operation of non-resident shipping Lines. There is a strong case for investigation in this Company and the Company would have paid much more, had proper care been taken by the ITO.

Originally the Company was registered in West Germany, later on the activities shifted to, HongKong and the ownership for Japanese.

2.5 M/s. Empee Corporation Ltd.

In this case, I should have been complimented for reduction of demand and the I.T.O. should have been pulled up for sending the proposal without adjusting the Surtax demand. Moreover there is no materials to prove that the file was put up before me between 10.2.86 to 17.4.86. The IAC's office and the IAC are intermingled and sometimes, the records are taken by Revenue Audit and by ITO's themselves for various work like preparing scrutiny report, giving appeal effect etc. Hence the delay cannot be attributed to me without bringing further materials on records.

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M/s. Perfect Gems Exports Pvt. Ltd.

The date of sending the proposal is not mentioned. The ITO's original records e.g. peon book etc. should have been verified to see how it was sent. I do not remember the case and the complaint has been made, after my handing over the charge on 12th January, 1987. This appears to be an instigated complaint behind my back. How the matter was put up before me only once on 12.2.86 and no other time between 12.2.86 and 12.1.87. Where the file was lying all this time ? This appears to be a strange case and I can solve the problem only after verifying the records etc. The allegation is not that I was sitting on the file all along. It is surprising that the successor IAC also came to know the matter only after receiving the allegation from the assessee Company and not otherwise.

2.7

M/s. Hapag, Lloyd A.G.

This is another case of Non-resident shipping Lines and the delay is normal as many things are to be looked into. Moreover, these Companies do not submit any audited P&L a/c. as such and the ITO had to depend on the unauthenticated account of the receipts. The delay might have been caused because of my pre-occupation with other work e.g. inspection work, collection of taxes as the year was drawing to a close. The fairly high position is given to the IAC in the hierarchy of IT authorities and he should be given this power of discretion to give priority to different nature of work.

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In earlier time, when the Financial Year was closing no refund was issued to boost up collecting in how many cases drastic action has been taken against ITO's and IAC's ? This is pathetic that I have to explain the small delay in this case.

2.8. M/s. Mercantile Shipping Company Ltd.

First the ITO should not have completed the assessment without obtaining prior approval and then all enquiries made were within the legitimate and bonafide jurisdiction of an IAC. This was according to the Circular of the Board being F.No. 5/6/67-IT(AI) dated 30.3.1967 as quoted earlier. The contention that the refund was genuine cannot be accepted in this case without making proper enquiries as above and the ITO took more time in sending the replies to my queries. This has already been explained to the CIT in great details by my letter dated 12.12.1986, along with the explanation for other cases including M/s. Great Eastern Shipping Co. Ltd. which has not figured in the charge on the basis of my explanation. In the case of M/s. Great Eastern Shipping Co. Ltd., a proposal of a refund of more than Rs.8 lakh was sent though the matter of 80J for earlier years following the Hon'ble Supreme Court's decision in the case of M/s. Lohia Machines Ltd. were pending and all these years would have resulted in a demand of Rs.1 crore approx. The same ITO sent this proposal and though the amount was small I decided to make enquiries as it was a case of non-resident shipping Line and old records were not available. The accounts were not authenticated by any chartered account though the foreign companies also come under some obligation for filing the audited account to the Company Law

authorities so far Indian receipts and expenses are concerned. Moreover, the company had to pay the charges to the Port Trust for which a communication was there and the amount was to be paid to the Port Trust, Bombay directly. After that adjustment there was no need of referring the matter to the IAC as the amount would have been much less than Rs.1 lakh. The amount is so small that the allegation that I had some dishonest motive is very pathetic. I cannot have any personal motive as I did not know personally the agents of the Company or the Authorised Representative. Neither I ever tried to know about them. Whatever enquiries were made, only made to the ITO though I could make them directly to the agents. That was perfectly within my jurisdiction as the IAC. This is a very important aspect which I want to bring up in respect of other cases also mentioned in the charge against me. Had there been any dishonest motive, I would have tried to contact the Companies directly or indirectly. There is not a single case where I had done such thing and as such the charge is baseless and needs to be dropped for lack of substance.

2.9. M/s. Ind. Exports Ltd.

This is a case where the assessment u/s. 141A was made without prior approval of the CIT in violation of the CBDT's Circular F.No.225/47/83-ITA.II, dated 30.7.1983. The matter was to be referred to the CIT. The assessment was completed in July, 1985 but the I.T.O. Sri K. Gopal neither referred to the IAC/CIT nor informed his successor I.T.O.

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about it. This I.T.O. also left and another ITO joined who referred the matter to the IAC. This was Shri Anand-Rajib Anand, a Probationer, who is not supposed to know about the circular. The original ITO who completed the assessment U/S. 141A of IT Act was a clever and experienced one who might have wanted to create some mischief and as such kept silent while handing over the charge to the Successor. It is not usual that such an important case went out of his mind. If any action is to be taken, it should have been taken against the I.T.O. for delaying the refund for more than a year. My notings dated or undated do not go to prove my dishonest motive as the IAC has got that much discretion as to how to make notings and ask explanations. What is wrong if, I had asked orally the ITO to submit an explanation.

The alleged delay on my part is for 4 months and ITO's delay is more than a year and the biased attitude of the department has already been mentioned by me.

In this particular case, I could not lay my hand readily on the circular mentioned above and as such I asked Shri K.K.Thankappan Inspector attached to me for searching out the same. But the said person, instead of finding out the circular, sat on the matter for a long time. Now in order to curry favour with the CIT, Bombay City II and the Chief Commissioner(Admn), Bombay, he offered to be a witness against his old master i.e. myself who has fallen in bad days.

It appears that the framer of the charges is also unaware of the circular mentioned above wherein it is clearly mentioned :

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2. It is, therefore, desired that every possible effort should be made to avoid provisional assessment in cases of banking companies where regular assessments can be completed within the period of six months. If, however, the Assessing Officer feels that the regular assessment is not likely to be completed within the period of six months, he may complete the provisional assessment with the prior approval of Commissioner of Income-tax. In all other cases where the refund likely to be issued on provisional assessment exceed Rs.1,00,000/-, the Assessing Officer should take the prior approval of the Commissioner of Income-Tax, who will assure that such assessment are taken up expeditiously and sincere efforts are made to complete such assessment on priority basis. However, while completing the provisional assessments for granting refunds, it should be ensured that such assessments are not resorted to indiscriminately.

From the above, it is clear that the ITO Committed the first mistake by completing the assessment without prior approval of the CIT. It is not the refund to be approved but the assessment itself. The difference is clear and unambiguous and the I.T.O. has committed, a grave offence by ignoring the Board's circular which I am sure he was aware of being an I.T.O. and working in Company circle for a long time though he was a group B I.T.O. This special favour was bestowed on him by the Chief Commissioner (Adm.) either for his extraordinary efficiency or for his close connection with another high official of the department.

*[Handwritten signature]*

of deduction of tax at source. Even challans are forged by the dishonest assessees - this was found out by a Search Party in Bombay only the other days. If the sincere attempts of relevant investigations are misconstrued and like this, the department is going to be thoroughly demoralised. The charge is not only the travesty of truth, it is malicious. The actual delay is only for 5 days from 21.11.86 to 26.11.86. This case was also not figuring in the original list prepared by the CIT. Hence I have been deprived of the show cause and natural justice.

2.11 M/s. Associated Auto Parts Pvt. Ltd.

At the Dak-stage ('Tapal' at Bombay), only remarks are made and the whole folder is returned to the clerk concerned who on turn distributes to different persons or folders. The allegation that I have taken out the proposal from the Dak is baseless, malicious and unbecoming on the part of the framer of the charge. This is a pure guess to malign me. It is not clear whether at Dak-stage, any remarks had been made by me, if not it was definitely lying with the Inspector, Shri K.K.Thankappan who put up only on 12.12.86. I want to ask the department to question behind my back the three predecessor Inspectors who worked with me before Shri Thankappan whether I was in such habits. Even about my demeaner, honesty questions can be put to my office staff, Mrs. Salgaokar, Mrs. Vijay Lakshmi, Inspectors, Mr. Wag, Mr. Chaubey, Mrs. Ramchandran. I am going to call them as witnesses before the enquiry Commission to establish my point. When according to the charge, this function of

mine is not statutory, what is wrong even approval is given in writing on the I.T.O's copy itself particularly when no prescribed procedure or form is there. It seems the department is seeing the ghost in every bush. The importation of 'dishonest motive' is the wild imagination of a fertile brain. This case was not figuring in the original list being the Annexure to L.O. No.BCII/Misc.-RO/86-87 dated 24th September, 1986, containing 8 cases only. So I was not given the Show Cause and as such natural justice has been denied to me so far these 6 more cases are concerned.

2.12 M/s. The Indosal Chemical Corporation Ltd.

Here again the baseless allegation of my taking away the proposal from the Dak-stage (Tapal) on no materials whatsoever has been made. The presumption is preposterous and based on the subsequent noting authenticated by my Inspector's dated noting. When my noting on the file is being questioned, my Inspector's noting is being used against me. The delay was found out by me as the file was lying with the Inspector and as I got the reminder from the CIT for sending a reply to him for the same delay in other cases, I enquired about the pending cases also. This is proved by the explanation sent by me to the CIT by my letter dt. 12.12.86. There was the sincere intention of clearing the back-log and the same has been interpreted in a different light.

This case was also not figuring in the original list and I was denied the show cause and natural justice. The records also

30/67

are to be properly verified for a comprehensive and factual report. The delay, according to me, is reasonable and mainly because of my pre-occupation with other important work of appeal scrutiny, inspection of ITO's collection of taxes, voluntary disclosure etc. etc.

2.13 M/s. Detroit Investment and Finance Pvt. Ltd.

Again here is the same complaint of my taking out the proposal. I deny the same categorically and at the same time want to state that the entire edifice of my misbehaviour has been built on the notings signed and dated by the Inspector, behind my back. This case also was not there in the original list and I received no show cause. I applied for permission for verifying such notings and 'records' for a proper reply to the charge sheet.

2.14 M/s. Atlantic Rhadrai F&W Joch, West Germany.

This is not a time-barring case, ITO should not have completed the formalities of entering the case in Demand and Collection Register and sending the Demand Notice and Assessment Order to the assessee without preparing the Refund Voucher after completing the formalities of approval. Taxes are paid on the basis of Assessments u/s. 172(4) and there is no reason why these records should not form the part of the final Assessment records and all original challans should be placed in respective folder for assessment u/s. 172(4). Manifest were called for a definite purpose, only officials who have no knowledge of the working of Shipping business, will call the action unnecessary. In the case of M/s. Khemka & Co. being the

agent of Polish Shipping Line, I have collected extra tax of Rs.90,000 (approx.) by calling the Export Manifest from the Custom Authority. The statement before the ITO and the said manifest were at variance, so far the destination of cargoes is concerned. Their claim for Double Taxation relief was found wrong and they agreed to pay the tax. Here also similar thing could have happened if only proper enquiry was made. The Non-Resident Shipping Lines should be assessed after thoroughly going through the Double Taxation agreement. So it was not a useless query and it was done with a definite aim.

This is also a case not included in the original list as above and I have been deprived of the Show Cause and natural justice. However I want to state that the successor IAC was completely ignorant about the assessment procedure of Non-resident Shipping Lines and his 'due approval' does not carry any weight as he joined only on 12th January, 1987. This Sections of IT Act, 1961 are not dealt in other charges and as such he had no chance of knowing anything about it. So far the complaint is concerned, I am constrained to say that to justify my suspension, this has been elicited backdated. I can definitely prove it, if only I am allowed to see the complaint and verify other relevant records.

3. So far this paragraph is concerned the refund was not delayed but it was quickly issued. This is mentioned only to compare the other fourteen cases where so called undue delay is



there. This goes to prove that normally the matter is not delayed. There had been definite reasons for delaying those cases and in fact there was no scope of delay if the ITO's followed the directions of the CBDT.

4. The Board's instructions are only in respect of expeditious disposal i.e. within reasonable time. As I have already stated, these do not cover the cases where IAC's/CIT's approval is there. The Board has a contrary circular as quoted by me. Speaking legally, the reasonable time has been explained by the Hon'ble High Court, Patna, in the case of Rajendra Narayan BhanjaDeo v. CIT 2 ITC 82 (regarding service of Demand Notice where notice of demand issued after fourteen months after the expiry of the assessment year held to be issued within reasonable time. Hence in all the fourteen cases, approval was given within reasonable time and no action is warranted on the part of the I.T. authorities and consequent alleged failure to maintain devotion to duty as required U/R 3(1)(ii) of the Central Services (Conduct) Rule 1964 is farfetched and entirely baseless.

5. There is no requirement of giving my reason in writing regarding which approval is to be given quickly and which to be delayed. The delay has been explained adequately and the allegation of manipulation of records is unfounded and based on some surmises and conjectures and as such the allegation that there has been failure on my part to maintain absolute integrity as required U/R 3(1)(i) of the Central Civil Services (Conduct) Rules, 1964 has got no substance at all.

70

-; 22 ;..

May I, therefore, hope and pray that the highest authority of the land would kindly consider the case personally and save a Scheduled Caste family from utter ruin and disaster.

I remain,

Sir,

Yours faithfully,

Dated, Calcutta,

( JOYDEV MALLICK)

The 26th April, 1988

3B, Panchanantala Road,  
Calcutta - 700 029.

True copy  
M.R.A  
P.V.

A Y

ZB  
VIA

A - 4

NO.C. 14011/45/87 V & L  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

NEW DELHI, DATED THE 18TH NOVEMBER, 1988

WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Central & Appeal) Rules, 1965 is being held against Shri Jaidev Mallick, Deputy Commissioner of Income Tax, Bombay.

AND WHEREAS the President considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said Shri Jaidev Mallick.

NOW, THEREFORE, the President, in exercise of the powers conferred by Sub-rule (2) of the Said Rule, hereby appoints Shri S. Lahiri, Commissioner for Departmental Inquiries, Central Vigilence Commission, New Delhi, as the Inquiring Authority to inquire into the charge framed against the said Shri Jaidev Mallick, Commissioner of Income-Tax, Bombay.

(By order and in the name of the President)

(B.K.Jain)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA

Shri Jaidev Mallick  
Deputy Commissioner of  
Income Tax, Bombay.

Through the Chief Commissioner of  
Income Tax, Bombay.

True copy  
M. R. Anand  
Ad

4-5

1. Kaira Dist. Milk Producers' Union Ltd.

Status: co-operative society.  
P.A.No. CV-9506, Co. Cir. XII, Ahmedabad.

A.Y.	Income assessed	Date of order	
---	-----	-----	
76-77	33,07,370	15-10-82	Orders x giving effect to CIT(A)'s order dt. 16-3-82
77-78	33,92,739	15-10-82	
78-79	39,40,240	5-11-82	

Audit conducted between 31-5-83 and 2-7-83  
LAR No. RAV/9(7) CIT-II/506 dt. 7-10-83. //

... x ...

(L) Para 1 (i)

Incorrect payment of interest.

AYs. 76-77, 77-78 and 78-79

According to the orders of the Commissioner of Income tax (Appeals) dt. 16-3-82 the assessee is entitled to a refund of Rs. 14,99,639/- The order passed on 16-3-82 was received in the ward on 25-3-82 and the orders giving effect to the appellate orders have been passed only on 15-10-82 and 5-11-82. It also appears from the records that a second appeal has been made to the I.T.A.T. and that the refund in question, though authorised in October 1982 and November 1982 have not been paid to so far to the assessee. In the said order, alongwith the refund of tax interest amounting to Rs. 71,660/- is also authorised tax u/s. 24(1A). Section 24(1A) contains a proviso that in cases where interest u/s. 244(1A) is paid, no interest u/s. 244(1) shall be paid. The burden on the exchequer in the form of liability to pay interest caused by the delay in issue of the refund was avoidable. The exact amount of interest paid to the assessee due to delay in giving effect to appellate orders may please be intimated to audit. >

1. (21) ~~in~~ ~~other~~ functioning of the Department. It reflects only the

(3)

Kaira Dist. Co. Op. Milk Producers' Union Ltd.  
A.Y. : 1976-77  
Ass. order : 15-10-82  
date  
Assesded income : Rs. 33,07,370/-  
(entered in D&C register for 1983-84)  
LAR No. RA-V/9(7)CIT-IV/IT-2/773 dt. 4-9-85.

73

-: 3 :-

~~the net demand of Rs. 82,739/- raised in view  
of the order dated 23/9/83 was carried out  
in 7/83 against the refund for the A.Y.  
78-79. Interest leviable under section  
220(2) for the period from 1/11/82 to 30/6/83  
worked out to Rs. 6,611/-.~~

~~(iii) The CIT(A)'s orders were dated 16/3/82.  
The order for giving effect to these orders  
was passed on 15/10/82. The necessary entry  
in D & C Register was made in the Register  
for 83-84. The actual refund was given on  
2/7/83. There was, thus, inordinate delay at  
each stage. The circumstances in which such  
delay took place may please be intimated.~~

~~It would be partial to mention here  
that the assessee's claim for interest u/s  
244(1A) amounting to Rs. 1.34 lakhs approxi-  
mately is under consideration of the assessing  
officer. >>~~

~~A.Y. 80/81~~

PARA: 5

Assessee, The Gujarat State Fertiliser Co. LTD.  
Baroda.

PA No. 31-000-Cz.5990

A.Y. 1976.77 (N.S.I.A.)

A.O. dated 31.3.82 (Appeals Effect)

AVOIDABLE OR INCORRECT PAYMENT OF INTEREST  
BY GOVERNMENT:

5  
a) Interest of Rs. 15.54.770 was granted to  
the assessee company U/s.244(IA) as per assess-  
ment order dt. 31.3.82 as detailed below:

i) Interest on refund of Rs.  
58,18,302 (as per asstt.  
order dt. 10-10-80 giving  
effect to appellate order  
for 7 months (from 23.1.80  
to 10-10-80)

Bankers  
Rs. 4.07.274

ii) Further refunds as per  
asstt. order dt. 29.3.82  
(Appeals Effect- CIT(A)) Rs. 79.93.693

iii) Less demand as per A.O.  
dt. 31.3.82 Rs. 38,95.693  
(Appeal Effect CIT.(A))

Net Refund Rs. 40.98.205

Interest on Rs. 4098205

*25*  
Gujarat Steel Tubes Limited,

Status: Public Ltd. Co.

P.A.No. CY-2412

A.Y. 1981-82

Order u/s 154 dated 17-3-1987.

Audit conducted from : 23-9-1987 to 30-10-1987

The following officers held the charge of the ward during the period covered by audit.

Shri S.C. Gupta, IAC - 1-4-86 to 7-5-86

Shri C.C. Master, IAC - 8-5-86 to ~~31-3-87~~ 31-3-87

LAR RA- 1/9 (7)/CIT-I-IT- 570 1117  
25-2-88

A demand of Rs. 8,09,185/- was created by an order u/s 154 passed on 8-1-86 for A.Y. 1981-82. The demand notice with respect to this demand of Rs. 8.09 lakhs was issued on 31-3-86. This demand was subsequently enhanced to Rs. 14,26,022/- by another order of rectification u/s 154 dt. 17-3-87. Refund due to the assessee u/s 141-A in respect of A.Yrs. 1984-85, 1985-86 and 1986-87 totalling to Rs. 4,98,758/- and payment made in cash Rs. 6820/- were adjusted on 17th March, 1987 against the demand of Rs. 14,26,027/-

A.Y. 1984-85 Date of order u/s 143(3) : 20-3-87

Refunds have been adjusted after a period of more than 12 months for first two asst. years.

1) M/s. Stomech Engineering Pvt. Ltd.

A.Y. : 1980-81

Assessed Income. : Rs. 68,410/-

Dt. of order : 17-9-81.

... x ...

The assessee has filed the return on 16-10-80 and assessment was made on 17-9-81 determining tax of Rs. 47,800/- out of the advance-tax of Rs. 94,600/-, refund of Rs. 46,800/- and interest u/s 214 of Rs. 7,956/- has been made. Had the provisional assessment done u/s 141-A, the interest to the extent of Rs. 1872/- could have been saved.

2) M/s. Phonex Petrochem Pvt. Ltd.

Status : Pvt. Co.

P.A. No. : CY-6375

Ass't. year : 1980-81

Sec. of order : 143(3) 24-11-88  
and date.

Assessed income : (-) 82,479/-

The assessee has filed the return on 30-8-80. Assessment was finalised on 24-11-81. Refund of Rs. 19,400/- representing advance-tax was made together with interest of Rs. 3,686/- under sec. 214. Had the provisional assessment been done under section 141-A within six months, the interest to the extent of Rs. 1552/- could have been avoided.

... x ...

*77* *W*  
M/s. Saurashtra Cement & Chemicals Industries Ltd.

Assessment year 1988-89

.....

Assistant Commissioner of Income tax, Jamnagar, Central Circle, completed the assessment on 31.3.1989. Refund of Rs. 3,00,000/- paid on 15.6.89 after reference to Dy.C.I.T., Central Range-II, Ahmedabad. So usual delay of  $2\frac{1}{2}$  months has been there. It is not even noticed by any authority. No action has been taken against the Assistant Commissioner of Income tax or Deputy C.I.T. for this delay, whereas in my case action has been taken for delay of  $1\frac{1}{2}$  months. This is sheer discrimination. Such cases are in thousands in the department.

True copy  
M.R. Arora  
A

175  
180  
18  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

24/9/90  
ADDITIONAL BENCH AT AHMEDABAD

O. A. NO: 535 of 1989

Jaidev Mallick  
v/s.

..... Applicant.

Union of India & Ors.

..... Respondents.

Written Reply

PTB

I, C.V. Gupte, Chief C.I.T.-II,

Ahmedabad do hereby state as follows :-

Reed copy 4.  
Sub to Adl abo  
Brod decision  
Served to Adr  
acknow n  
14/9/90

1. I am conversant with the facts of the case and am able to depose to the facts stated herein.
2. I submit that disciplinary action is initiated against the applicant not because of any misconduct arising out of any quasi judicial function but against the activity which is administrative in nature. The charges levelled against the applicant are for irregularities while working as an administrative officer, dealing with issuance of refund orders. Since the applicant has approached the Hon'ble Tribunal at this stage, the application is not maintainable and this Hon'ble Tribunal may be kind enough to reject the same. Even otherwise --

the charges levelled indicate a dishonest motive or misconduct on the part of the applicant.

3. Without prejudice to the aforesaid, I submit my parawise remarks as follows :-

(A) Regarding para 6.1 of the application I submit that the applicant joined the Income-tax Department as a Class-I Officer on 29-7-1965. He was promoted as Assistant Commissioner (now redesignated as Deputy Commissioner) of Income-tax from 26-7-1977. He was given selection grade with effect from 1-9-1986. He has been confirmed as a Deputy Commissioner on 31-7-1987 (with effect from 20-3-1987.). The applicant has contended that there are no adverse remarks in his C.R. prior to 7/87. In this connection it is submitted that for 1986-87 the Reporting Officer, namely, the Commissioner of Income Tax, Bombay City II, Bombay has appended a note in respect of Co. 19 of the C.R. (relating to integrity). In the concluding paragraphs of this note the Commissioner of Income-tax has observed that the applicant's integrity is suspected and he has been identified by him to be included in the "agreed list" of Officers with the CBI. For arriving at this opinion, the CIT has quoted some instances involving eight company cases-

Wherein it is stated that the applicant has delayed his approval for issue of refunds exceeding Rs. 1 lac apparently without any valid reason. It is also observed by the CIT that the applicant has made irrelevant and unnecessary enquiries in these refund cases referred to him by the ITOs which ultimately did not yield anything. This act of the applicant was suspected to be out of malafide motive. From the files received from Bombay it is noticed that the Board had desired to obtain the explanation of the applicant on the issue of indordinate delay of approving therefund cases, noted in the C.R. for 1986-87. This letter was addressed to The Chief Commissioner of Income-tax, Bombay. The Chief Commissioner of Income-tax, Bombay thereafter directed the Commissioner of Income-tax Bombay City II to obtain the applicant's explanation. As per letter dated 12/06/1987 the explanation of the applicant was asked by the Commissioner of Income-tax Bombay City-II and it appears from the file that no explanation seems to have been sent by the--

applicant. Thus the applicant's assertaion that he was confirmed as Deputy Commissioner of Income Tax in July 1987 and hence his inference that his CRs upto July 1987 would be clear has no basis. It is further submitted that for the purpose of promotion to the grade of Commissioner of Income-tax, Dy. Commissioner of Income-tax with eight years regular service, if any, in the non-functional selections grade or 17 years regular service in group A of IRS with atleast 4 years of which should be in the grade of Dy. Commissioner of Income-tax, only are considered. Copy ~~refixing seniority~~ of the order fixing seniority of officers pursuant to the judgement of CAT, Chandigarh is enclosed. Prior to the order of refixing the seniority of the applicant pursuant to the Chandigarh Bench of the Hon'ble Tribunal's judgement the applicant was duly considered by the DPC for promotion to the grade of Commissioner of Income-tax by the DPC constituted in September 1987. However, since the applicant was lower down in the consideration zone he was not recommended for promotion to the grade of Commissioner of Income-tax for want of sufficient number of vacancies----

by the DPC constituted in September 1987. However, since the applicant was lower down in the consideration zone he was not recommended for promotion of want of sufficient number of vacancies. It is true that the applicant has been confirmed vide Notification No.A-32011/5/84-Ad VI dated 31/07/1987.

(B) Regarding para 6.2 of the application it is submitted that the order under Rule 10(1) of C.C.S. (Conduct) Rules, 1964 placing the applicant under suspension with immediate effect was issued on 8-9-1987 and served on the applicant on 23-9-1987. The order was issued on the basis that disciplinary proceedings against the applicant were contemplated. The delay in issue of Charge-Sheet was due to the fact that precise details had to be culled out from voluminous records, and advice of certain bodies was required before issue of Charge-Sheet. It is denied that charges levelled against the applicant are trivial. Suspension order was revoked after disciplinary-

proceedings were initiated because by then the purpose for which suspension was ordered had been served.

(c) Regarding para 6.3 of the application it is submitted that it is denied that the Charge-Sheet issued to the applicant does not reveal any case of dishonest motive or of misconduct on the part of the applicant. Annexure-II to the Charge-sheet may be referred to in which it is explained how the facts of the case in which refunds have been delayed indicate a dishonest motive or misconduct on the part of the applicant. The facts stated in the Charge-Sheet also indicate prima facie that the applicant was personally responsible for the delay in granting approval for refunds.

(D) The averments in para 6.4 of the application are denied. The work relating to the approval of the refunds is an administrative function which involved checking of the payments of taxes and arithmetical accuracy of the working of tax payable and refund due. In this respect the facts mentioned in the Annexure-II to the Charge-Sheet may be referred to. It

is not correct to say that the time taken by his predecessor or the subordinate staff and other relevant factors have not been taken into consideration while initiating disciplinary proceedings against the applicant. The *prima facie* responsibility of the applicant for the irregularities under consideration has been fixed after careful consideration of all the facts and circumstances of each case.

(E) The averments in para 6.5 of the application are denied. That the charge levelled against the applicant does not constitute any misconduct. In as many as 10 cases mentioned in paragraph 3 of the Annexure-II to the Charge Sheet, the refunds were approved within a few days of the receipt of the proposals while in the other 14 cases in respect of which misconduct is alleged there is undue and unjustified delay caused by the applicant in the matter of granting approval of large amounts of refunds justifying the inference that the delays were

motivated. Disciplinary proceedings against the applicant have not been initiated in any arbitrary manner or with any malafide intention, but on the basis of evidence and after fully considering all the relevant facts and circumstances of the case. Hence the proceedings against the applicant are not liable to be dropped. It is denied that any discrimination has been made against the applicant by instituting such proceedings. In the matter of disciplinary action, no distinction can be made between S.C. and non-S.C. official. It is denied that the applicant has been given any harsher treatment than that justified on the basis of the facts of the cases.

(F) Regarding para 6.6 of the application it is submitted that a Commissioner for Departmental Inquiries of the Central Vigilance Commission has been appointed as the Inquiry Officer on 18-11-1988. The inquiry has been instituted within a reasonable time after denial of charges by the applicant. Full co-operation -

will be extended to the Inquiry Officer as and when the hearing is fixed by him. Since disciplinary proceedings have been initiated against the applicant, sealed cover procedure has to be adopted in so far as his promotion is concerned. Non-grant of promotion by adoption of sealed cover procedure is not a penalty.

(G) Regarding para 6.7 of the application it is submitted that the Disciplinary proceedings have been rightly and properly instituted as explained in earlier paragraphs. At this stage therefore the Honourable Central Administrative Tribunal is not competent to adjudicate upon this matter. Other averments are denied.

(H) Regarding para 6.8 of the application it is submitted that the work regarding approval of grant of refunds arising as a result of orders passed by the assessing officers is essentially administrative in nature. As set out in the Annexure-II to the Charge-Sheet, the applicant caused undue delays in grant of approval to the proposals to issue refunds-

above Rs. one lakh in 14 cases, but at the same time he granted such approval within a few days in certain other cases, clearly giving rise to the *prima facie* inference that his approval was discriminatory and motivated.

Facts and circumstances of the cases in question show that apparently the applicant himself was responsible for the delays.

(I) Regarding para 6.9 of the application it is submitted that the facts of this case are different from these in the case of Shri. M.N.-Qureshi and hence the decision of the Honourable Tribunal in that case is not applicable to the case of the applicant. This is particularly so as the applicant was performing essentially administrative duties when considering the grant of approval to issue of refunds in the 14 cases under consideration. It may be stated that the proposition that there cannot be a misconduct while an Officer is discharging his duties of a quasi-judicial nature has not been accepted and the matter is taken up by filing an S.L.P. before the Supreme Court. -

The Principal Bench of CAT, Delhi have held in the case of Shri V.D. Trivedi Vs. Union of India that no general immunity from disciplinary action <sup>is</sup> available to Officers performing functions of a quasi-Judicial nature. This view was based on the Supreme Court's judgement in the case of Shri P.G. Govinda Menon.

(J) Regarding para 6.10 of the application it is submitted that the facts in the case of applicant are different from the facts in the case of J.A. Ahmed. In the case of the applicant there is not mere inaction or delayed action but there is prima facie evidence of arbitrariness and malafide~~s~~ delay in deciding matters in 14 cases, which constitutes misconduct. The Honourable Tribunal is, therefore, not competent to interfere in the matter of institution of disciplinary proceedings against the applicant.

(K) Regarding para 6.11 of the application it is submitted that the work relating to approval of proposals to grant refunds is essentially administrative in nature. There was no discr-

mination against the applicant in instituting disciplinary proceedings against him. The facts of the 14 cases show that the applicant was personally responsible for the delays and that these delays were apparently motivated.

(L) Regarding para 6.12 of the application it is submitted that the full details of the cases of delay in issue of refunds cited by the applicant have not been given and in the absence thereof it is not possible to make any comparison. As the applicant has raised this issue in his defence, he may be put to strict proof about his averments in this regard. In any case, as far as the applicant is concerned, the delays caused by him were apparently motivated. Other averments are denied.

(M) Regarding para 6.13 of the application it is submitted that as explained above, the delay was in grant of approval to issue of refunds on the part of the applicant and it could not be attributed to the assessing officers. This

is a post-assessment function of purely administrative nature and hence there is no question of taking an action against the assessing officers.

(N) Regarding para 6.14 of the application it is submitted that the irregularities on the part of the applicant are not in the nature of honest mistakes but were apparently the result of a dishonest motive. Hence, these justified initiation of disciplinary proceedings. The applicant will have full opportunity to defend himself during the Inquiry being held by the Commissioner for Departmental Inquiries who belongs to the Central Vigilance Commission, an outside and independent agency. No special protection is available to any official belonging to any group if his actions are dishonest and motivated.

(O) Regarding para 6.15 of the application it is submitted that as mentioned above, the proceedings have been initiated within a reasonable time and these are also expected to be concluded-

: 14 :

..... be admitted during the period of suspension within a reasonable time. The charge against the applicant is that of causing delay with dishonest motive and not that of causing loss to Revenue. The time lag between the misconduct and the inquiry is not likely to be such as will make it difficult for the applicant to defend himself during the Inquiry.

(P) Regarding para 6.16 of the application it is submitted that the applicant was placed under suspension on 9-8-1987 when departmental proceedings were contemplated against him. The suspension was revoked after a proper review of the facts and circumstances of the case. The applicant was confirmed on 31-7-1987 with effect from 20-3-1987 which date falls much before the date on which decided to placed him under suspension. This fact shows that all along the applicant's case in every respect was considered on mertis. No action has been taken in the case of the applicant which is in violation of principles of natural justice and fair play. Records will be produced before the Honourable Tribunal if necessary to show that all actions-

95

taken were bonafide and justified by facts and circumstances of the case. A decision regarding payment of full pay and allowances for the suspension period can be taken only after the disciplinary proceedings have concluded. Increments due have since been released, subject to the suspension period not being treated as duty period, for the present.

(Q) Regarding para 7 of the application it is submitted that for the reasons mentioned above, the applicant is not entitled to the reliefs sought by him as mentioned at (1), (2), (4) & (5). Relief at (3) has already been granted to him, but it is denied that proceedings have been ~~wrongly~~ instituted against him.

(R) Regarding para 8 of the application it is submitted that the interim relief claimed by the applicant regarding the stay of the operations of the orders issuing the Charge-Sheet and appointing an Inquiry Officer may-

also not be allowed by the Honourable Tribunal for the reasons mentioned above and the lawfully instituted disciplinary proceedings may be allowed to take their own legal course.

4. In view of the aforesaid facts the application is not fit to be entertained by the Hon'ble Tribunal and is required to be dismissed with costs.

5. The respondent reserves his right to file a detailed affidavit as and when found necessary.

Dated this 13<sup>th</sup> day of September, 1990.

R. P. Bhatt

(R.P. Bhatt)  
Advocate for the Respondents.

-: Verification :-

I, C.V. Gupte

age... 52..... working as... Chief C.I.T. II.....

in the office of Income Tax, resident of Ahmedabad

..... do hereby verify that the contents of peras, I to ..5..... are true on legal advice and that I have not suppressed any material fact.

Dt: 12-9-1990

C.V. Gupte

Reply/Rejoinder/written submissions  
filled by Mr. .... R.P. Bhatt  
learned advocate for ....  
Respondent with account  
Copy served/not served

Dt: 12/9/90 By Registrar C.A.T. (J)

17/9/90

941 (S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AND CIVIL BENCH

AT AHMEDABAD, C.A. No. 335 of 1989

\*\*\*\*\*

In response to the written reply submitted by the Department of Income tax to the Hon'ble CAT on 12.9.1990,  
I, J. Mallick, <sup>Working as The</sup> Deputy Commissioner of Income tax (OSD), Audit,  
Ahmedabad do hereby state as follows:

1. I deny the averment contained in para 2 of the written reply that I was not acting quasi-judicially in approving the issue of refunds exceeding rupees one lakh referred to me by the Income tax Officer of the Com. Circle, II, Bombay, during the period from June 1986 to January 1987 while I was acting as the IAC of Com Range- I, Bombay. As the approval was required for the issuance of refund under the Income tax Act, 1961, specially with regard to the provisions of Sec. 143(3) dealing with the assessment of the income resulting in refunds aforesaid and the provisions of section 240 of I.T. Act, 1961 dealing with the refund itself, I was acting only quasi-judicially as provided in the Income tax Act. This aspect of work has been performed by me in contradiction to the normal administrative work like granting of C.L. to the Officers, recommending H.B.A. to the staff and such other things.

*Certified  
to Mr. P. P. Mallick  
by Mr. P. D. Patel  
H.M. M.A.  
10/10/1990  
16/10/1990*

2(i) Without prejudice to the aforesaid I omit the para-wise remarks to the reply as follows:-

In response to para(A) of the reply, the petitioner submits that he is not aware of the remark made in the ACR for the year 1986-87 by the Reporting Officer, as the same is not communicated to him at any time. The petitioner says that no remark made, in respect of the column 19 of the ACR (relating to Integrity) has been made by the Reporting Officer out of personal grudge and animus against him as he belongs to the Schedule Castes. The sole purpose of this remark was to stop his promotion which was due and for which the DPC sat on 8th and 9th of September, 1987. It is also submitted that the Reporting

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Officer, i.e. Shri V.K. Shrivastava, the then C.I.T., Bombay City -II, Bombay, wrote his ACR for the year 1986-87 while he was on medical leave at Calcutta and the same has been written without his self-appraisal. The Reporting Officer was in terrible hurry for reasons best known to him and he did not wait for his self-appraisal report (proforma being received by him on 10.4.1987) which was sent by him in time on 16.4.1987 to him by the Registered post and the fact that the self-appraisal form was being posted was again brought to the notice by a telegram sent by him. The way he behaved in sending the ACR to the CBDT already establishes his strong bias against the petitioner to the extent of his being fanatic and unreasonable.

(ii) There is a fixed time schedule for writing the ACR, but he did not bother for that and sent the ACR long before the stipulated date. This hurry can be explained only in the context of his determination to harm the petitioner's cause as he was about to be promoted on the basis of the same ACR. He has violated the rules and regulations for writing the petitioner's ACR and for not allowing him to write the ACRs of the ITOs and the staff of Com.Cir.II, Bombay, though he had worked there upto 12.1.1987. The C.I.T., Bombay II got the ACRs of ITOs and staff written by Shri R.M. Upadhyaya, his successor who worked as IAC, Com.Rang.II, Bombay, in that year exactly for 78 days only, the minimum requirement being 90 days whereas the petitioner worked for 287 days. Such instances of discrimination and bias are galore in his case while dealing with the petitioner. How he could write the ACR without receiving the self-appraisal form, it is difficult to understand. The CBDT also subsequently acted in hurry by ordering his suspension on 8.9.1987 i.e. the day on which the DPC first sat for considering the petitioner's promotion to the post of Commissioner of Income tax. This order of suspension was made in contemplation of disciplinary proceedings as CBDT passed the order of suspension without considering the facts that the petitioner was on medical leave with effect from 1.8.1987 and was not in a

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position to interfere with the preliminary investigation, if any, as he was staying at Calcutta - his hometown.

iii) The letter of the C.I.T. dated 12.6.1987 covers only 7 cases but the charge-sheet included as many as 14 cases and for 7 additional cases no chance was given to the petitioner to explain the circumstances at any stage before the issuing of the charge.

That itself vitiates the whole disciplinary proceedings and render it ab initio void. As regards the reply to the letter dt. 12.6.1987

written to the petitioner by the C.I.T., Bombay City-II, Bombay, the petitioner has to state that the petitioner has written a letter to the Commissioner of Incometax, Bombay City-II, Bombay, for

supplying the petitioner with the necessary records for sending detailed reply as the petitioner has already submitted a reply

to the Commissioner of Income tax explaining the circumstances under which the delay occurred without prejudice to the fixing of responsibility

for the same ~~day~~. A copy of the said letter dt. 29th June, 1987 was

endorsed to the 1st I.T.O., Com. Circle, II, Bombay for compliance.

The same records were not supplied to the petitioner through the petitioner was sitting in the same building and working as IAC(Acquisition) Range, Bombay. So far as the petitioner was concerned, he could throw no more light without being provided with records

sought for and the petitioner discharged his onus by writing the letter to the Commissioner of Income tax, Bombay City-II, Bombay.

It is admitted by the department in the reply that the petitioner was confirmed in the grade of Assistant Commissioner with effect from 31.7.1987 and he was given the selection grade with effect from 1.9.1987. Both these processes require a DPC to be held which

probably has taken place in the month of July itself or in June 1987 at the earliest. When the DPC had taken place, the up-to-date ACRS i.e. including the ACR for F.Y. 1986-87 were taken into consideration,

and the DPC has not found the ACR for 1986-87 as adverse, otherwise both the confirmation and selection grade would not have been conferred on the petitioner in the month of July 1987. The so called misconduct which was known to the authority before the petitioner was confirmed and promoted to the Selection Grade and when it must be taken that the lapse or misconduct has been condoned. Any further penalty cannot be imposed. Reference may kindly be made to the following decisions:

L.W. Middleton V. H. Playfair - AIR 1925 Cal. 87

Lal Audhraj Singh V. State of M.P. 1968 S.L.R. 88.

(AIR, 1967 M.P. 284)

Collector of Customs V. Rebati Mohan Chatterjee 1976(2) S.R.L.R. 897

Mohammed Habibul Haque V. Union of India. 1978(1) S.L.R. 637,

Union of India V. Mohammed Habibul Haque. 1978 (1) S.L.R. 748.

From the reply it is strongly suspected that there might have been some vital missing links in the statement of fact as evident from the reply and as visualised by the subsequent order of suspension and charge-sheet issued against the petitioner. This is also submitted by the petitioner that the Hon'ble CAT may call for the records maintained by the CBUT in respect of vigilance and the original ACR file containing the petitioner's ACRs, upto 1986-87.

iv) Further in respect of both confirmation and Selection grade vigilance clearance was necessary and the same has been given in July 1987 though the matter of delay i.e. giving approval for issuing refund was already with the Disciplinary Authority and it is claimed that the integrity column of 19 of the ACR form for 1986-87 was <sup>already</sup> <sub>there</sub> before the same authority. It is not understood how the vigilance clearance was given to the petitioner for both confirmation and Selection Grade, it is a real enigma requiring a lot of explanations by the Department. The reply in this respect has concealed more than it has revealed.

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v) In this respect the date of the order of suspension i.e. 8.9.1987 the very day on which the DPC for the promotion to the post of Commissioner of Income tax has set for consideration of the case of the petitioner and others, is vitally important, and in fact, the said DPC recommended the names of 63(sixty three) Assistant Commissioners including 29(twenty nine) officers junior to the petitioner as per the seniority list as on 8th September 1987 (vide order No.A/22011/1/88 AC.VI, Government of India, Ministry of Finance, Department of Revenue, New Delhi dated the 4th January, 1988.)

vi) It is vehemently contested that the promotion was not given though the petitioner was considered by the DPC for want of sufficient number of vacancies. On the contrary, it is seen that the promotion has been given to as many as 29(twenty nine) juniors as per the seniority list submitted to the DPC.

3. In response to para(B) of the reply: it is submitted that the order of suspension dt. 8.9.1987 was served on the petitioner on 23.9.1987 and the charge sheet dated 15.2.1988 was served on the petitioner on 9.3.1988, and the delay is explained because of the voluminous records to be considered before framing the charge. It is not at all correct to say that there were voluminous records. The delay in respect of 14 cases only has been mentioned in the charge-sheet and the listed documents consisted of the slim file containing papers and ~~order~~ charge-sheets which could be properly read within a few hours only. Nothing is far from truth than the claim that the charge sheet was culled out after going through the voluminous records. When the petitioner approached the department for relevant papers from the listed documents, he was given zerox copies of the 60 pages of documents which pages containing sometimes a few lines only and order sheets containing 22 pages being relevant for <sup>his</sup> defence. It is

It is submitted that the delay was unusual and it was at the instances of the then Chief C.I.T., Bombay - Shri V.K. Srivastava who was having some personal grudge against the petitioner as already mentioned. It is also submitted that the chargesheet was served on the petitioner on 9.8.88 and the suspension order was revoked on 27.7.88. The delay is not explained at all and it appears that the charge was framed on trivial grounds and the delay was utilised as an instrument of torture at every stage. Firstly there was no valid ground for disciplinary proceedings as no misconduct was committed by the petitioner. Secondly, the order of suspension was revoked at the sweet will of the authorities long after the service of the charge sheet i.e. on 27th July, 88. Then there was inordinate delay in granting the subsistence allowance through the order for such subsistence allowance should have accompanied the order of suspension as per the rules framed by the D.O.P. The subsistence allowance was paid after more than eight months and though more than three months had elapsed from the date of order of suspension no revision was made of the 50% of the pay as required under the rules. Thus all the actions taken by the authorities since the order of suspension have been found discriminating, biased and illegal and against the rules framed by the Central Government.

4.(i) In response to Para (C) of the reply, it is reiterated that the charge sheet does not reveal any misconduct at all, only the mention in the charge sheet that the charged officer had a dishonest motive in delaying with the things is not enough. The Hon'ble Supreme Court has discussed this aspect in great details in A.L. Kiran's case and in J.A. Ahmed's case and the petitioner entirely relies on the ratio in the above two cases. It is submitted that the department has

relied on the definition of misconduct as mentioned in the Strouds' ~~J~~ Judicial Dictionary which has been found unreliable by the Supreme Court and it had held that the definition of the misconduct as above is not acceptable. Once again, I pray that if there is no distinct charge in the enumerated rules there cannot be any misconduct under the rule 3 of the CCS(CCA)Rules. Rule 3<sup>10</sup> of a general ~~rule~~ nature which provides that every member of service shall at all times maintain absolute integrity and devotion to duty. The judgement in Kalra's case(A.L.Kalra v. Project and Equipment Corporation - AIR 1984 SC 1361) had made it clear that rule 4 in the conduct rules of P & E Corp., which is almost similar to rule 3 of the Conduct Rules applicable to All India service and Central Civil Service specifies norm of behaviour but does not specify that its violation is misconduct. What is pertinent here is that according to Kalra's case where misconduct without proof entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that in ex-post facto interpretation may not be camouflaged as misconduct.

ii) The principles that emerge from these decisions can be identified as follows:

(1) The rules that every Government servant or employee of any corporation shall at all times maintain integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service or a public servant is only a general expectation of a certain decent behaviour and failure to keep to such high standard of moral, ethical or decorous behaviour by itself cannot constitute misconduct. (Kalra's case)

(2) Misconduct which, when proved, entails penal consequences must be defined with precision and accuracy. (Kalra's case)

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(3) In Ahmed's case the court has stated that mere inefficiency and error of judgement do not constitute misconduct. In Kalra's case the Supreme Court has observed that it is not proper that public servants should be exposed to the vagaries of subjective evaluation and that in a given context would constitute conduct unbecoming of a government servant to be treated as misconduct, would expose attorney areas not amenable to evaluation.

(4) In Glaxo Laboratories(I)Ltd. v. Presiding Officer Labour Court 1984(1) SCC 1 it is held that is objectionable is should there be any *ex-post facto* charge that some act of omission or commission nowhere found to be enumerated is nonetheless a misconduct. The easily perceptible principle underlying this, with respect, appears to be that no one can be accused that by any acts of omission or commission, he has committed misconduct if unless prior to the alleged incident on which the charge is based, the act of commission or omission has to the knowledge of the delinquent been declared to be an act of misconduct.

4. In response to para (C) of the reply, it is submitted that as it has already been stated in the earlier paragraph that the misconduct as mentioned in the chargesheet is not at all a misconduct as per the decisions of the Highest Court of the Country. Nowhere, in the charges, it is specifically mentioned which misconduct has been committed by the petitioner. Merely quoting from the rule books does not make an action a misconduct without being backed by the facts. The delay has been found to be a misconduct without properly verifying who was responsible for the delay. There was no preliminary determination of responsibility for delaying

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for delaying the matter and the enquiry has been started against the petitioner alone excluding others who were equally responsible. This is sheer discrimination against the petitioner.

5. (i) In response to para (D) of the reply, it is submitted that the approval given for issuance of refund is nothing but a quasi-judicial function assigned to the IAC. It is stated that the IAC's function is not limited to see the arithmetical accuracy and payment of taxes. He has to look at the assessment from the audit angle and in suitable cases he has to issue instructions for cancellation of the assessment as per the provisions of the I.T. Act. For doing so the IAC must find out the facts and all relevant materials utilised for finalisation of the assessment.

(ii) The initiation of disciplinary proceedings in this case was discriminatory in nature it can be ascertained by a mere reference to the facts of a few cases mentioned in the charge itself. In this connection, I would invite the attention of the Hon'ble CAT to note that the case in 2.1 in annexure II of the charge-sheet. In this case - M/s. Skymon Shipping Co. S.A., it is seen that the matter was pending since 2.4.1985 with the then IAC Shri D. Agarwal, the petitioner's predecessor, which was put up before the petitioner on 15.7.1985. The delay already occurred in this case is more than two months but ~~no~~ action was taken against the IAC for the same. This is a clear discrimination which is established on the basis of the same case for which the petitioner has been charge-sheeted. Then again even if the approval was accorded by ~~the~~ the ITO delayed the refunds. This fact was brought to the notice of the CIT, Bombay City-II, Bombay but since then no action has

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been taken against the I.T.O. also. This is also utter discrimination. Similarly, a reference may kindly be made to item No. 2,9 in the case of M/s. Indexport Ltd. The assessment was allegedly made u/s.143-A of the I.T. Act on 26.7.1985. The ITO concerned forgot to enter the assessment in the D & C Register and delayed the refund till it was referred to the petitioner on 27.8.1986. This inordinate delay of more than a year for issuing the refund has been overlooked by the authorities even when it was brought to the notice. For this delay in issuing the refund, huge amount of interest u/s.214 has been paid. How this delay can be absolved while delay for a few months on the part of the IAC has been the subject matter of the charge-sheet. This is nothing but sheer discrimination, and this goes to prove that the disciplinary action was initiated solely on the basis of a bias and partial attitude. There are other innumerable cases where delay for issuing refunds are ignored and such discrimination is contrary to justice and fairplay. It is not enough that justice is done but it should appear to be done as well. It is needless to say that due care and impartiality have been ignored for framing the charge-sheet against the petitioner. It is clearly established that a biased mind was at work and no amount of incongruity could have move him from the foregone conclusion. This was more so because of the utterly unsustainable suspension which was bound to be followed by a regular charge-sheet even though the materials used in the process were inadequate and unsubstantiated.

6.1) In response to para (E) of the reply, once again it is submitted that there is no misconduct in giving approval in certain cases quicker than the other cases without raising any queries. It is a tall order that all the orders passed should take equal time. Each case is a separate issue and no standardisation as mentioned in the reply is possible in the department. If the ITO is faced with the question why he has taken one day for passing an order and a month for passing another - this is neither reasonable nor fair. It is seen that in those 10 cases, the time taken varies between three days to 19 days. The comparison between these group of cases and another group of cases where delay has been found more may be due to the oblique reference that where approval was given quicker there was some element of personal gain but this was never the charge against me and the 10 cases referred to cannot be utilised without proper verification of the cases. This is an instance of vagueness of the charge and the general nature on which the charge is hinged. The petitioner submits here once again that the disciplinary proceedings was initiated on no grounds at all and it was mainly because of the personal grudge and for ulterior motive. Shri V.K. Shrivastava the then CIT., Bombay City-II, Bombay had taken over the charge of the Chief Commissioner (Adm) Bombay with effect from 1.5.1987. Till then no action was taken against the petitioner through the alleged misconduct was there already as noticed by him in September 1986. It is nothing but discrimination against the petitioner in initiating disciplinary proceedings when it is seen that the similar misconduct has been overlooked in the cases of the petitioner's ~~predecessor~~ as well as in the cases of <sup>his</sup> successors. Moreover, it is seen that the said officer has ~~sorted~~ acted in violation of the rules and

regulations for writing ~~by~~ ACR ~~of~~ the petitioner for the year 1986-87 and for not allowing the petitioner to write the ACRs of the subordinates who were working under the petitioner for the requisite period for that purpose.

This action should also be considered while adjudicating on the issues of discrimination and bias raised by the petitioner before the Hon'ble CAT.

iii) As the disciplinary proceedings have been initiated on no grounds and with a biased and closed mind the same are liable to be quashed by the Hon'ble CAT. It is also seen that the disciplinary proceedings were initiated against the petitioner only to stop his promotion, DPC for which sat on 8.9.1987. The department came up with the order of suspension passed on the same day and stopped the promotion of the petitioner in an unjust and illegal manner. As the suspension and the disciplinary action thereafter have been ~~passed~~ <sup>based</sup> on the report of the then C.I.T., Bombay City-II, Bombay who was having personal grudge and animus against the petitioner mainly because he belongs to the Schedule Castes ~~Community~~. This is evident from the harassment and discrimination meted out to the petitioner by the said CIT in applying the dubious methods including follow up and bugging up the telephone of the petitioner in the last week of July 1987, before that the petitioner's self appraisal report for the year 1986-87 was not taken into consideration for writing the ACR and again he was not allowed to write the ACRs of his subordinate staff for the same year. It is submitted that the disciplinary action in this particular case should not be allowed to continue as the same has been initiated on the grounds which have been found not fit for such actions by the Hon'ble Supreme Court in the cases of J.A. Ahmed and A.L. Kalra as mentioned earlier. It has been specifically mentioned that such lack of attaining the efficiency as falls under

the general rule 3 of CCS(CCA) Rules, may be subject matter of ACR's and how it is found from the reply that a mention has been made in the petitioner's A.R. and the disciplinary proceedings ~~are~~ superfluous, unjust and utterly disproportional to the offence committed by the petitioner. It is prayed that enough punishment has already <sup>been</sup> imposed in the form of suspension for a period more than 10 months with only 50% of the pay as subsistence allowance without any review by the disciplinary authority as envisaged in the CCS(CCA) Rules. It is also brought to the notice of the Hon'ble Court that the subject matter <sup>of</sup> and the disciplinary proceeding is the delay in issuing approval for refunds varying between 1½ months to 8 months. As against this delay, it is submitted that the subsistence allowance in the very same case has been delayed for more than 3 months though the disciplinary authority was supposed to ~~pass~~ the order for the same alongwith the order of suspension. Again it is found from the order dt. 18.1.1990 - restoration of seniority of the petitioner as a result of the Hon'ble CAT, Chandigarh's Bench's order in QA No. 173 of 1986, <sup>was inordinately delayed</sup> the same <sup>though</sup> order was received by the CBO in July 1987. ~~But the 2nd~~ <sup>for restoring Seniority</sup> order has been passed after an inordinate delay of more than three years jeopardising the interest of the petitioner in respect of promotion to the next higher grade for which DPC sat in October 1986, (for the restoration of seniority, the petitioner was entitled to be considered by this DPC), in September 1987 and then again in April 1988. ~~The~~ Petitioner has not yet been promoted though his juniors have been promoted upto the year of recruitment of 1969 the petitioner's year of recruitment being 1965. This way also the petitioner has already suffered heavier penalty, humiliation and distress. In addition, it is submitted that

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the petitioner had to delay a major operation for his wife for non-receipt of subsistence allowance and she ultimately died on 11th October 1987 as a result of the petitioner's illegal suspension and subsequent charge-sheeting and their multifarious aftermath. So it is urgently prayed that the disciplinary proceedings may kindly be quashed by the Hon'ble CAT.

7. i) In response to para (F) of the reply, it is submitted that the charge-sheet has been served on the petitioner on 9.3.1988, and the appointment of the Inquiry Officer has been made on 18.11.1988. This delay only indicates that the disciplinary authority ~~did~~ <sup>does</sup> not want to finalise the proceedings within a reasonable time. The first hearing has taken place on 6.10.1989 only which goes to prove again that the disciplinary proceedings will take much longer time and it will be a denial of justice to the petitioner if he is asked to go for the alternative remedies provided by the departmental machinery. The sealed cover proceedings cannot go on endlessly thereby jeopardising the whole career of the petitioner. He has only a little more than three years to go before his retirement in May 1994. The Hon'ble CAT may kindly adjudicate on the points raised by the petitioner in his petition.

8. i) In response to para (G) of the reply it is submitted that considering the special circumstances of the inordinate delay intentionally caused by the department at every stage since the order of suspension dt. 8.9.1987, the Hon'ble CAT may kindly take up the matter and pass whatever order it deems fit without keeping the matter hanging endlessly.

~~D. D~~ In response to Para (H) of the reply, the petitioner submits that he acted quasi-judicially, raised relevant and valid queries perfectly within his powers and jurisdiction assigned to him as the IAC., Cos. Range-II, Bombay. The delay as claimed was not undue at all. It was perfectly normal and the interpretation to the delay given by the disciplinary authority was <sup>c</sup>unalled for and entirely unjust. It is once again stated that before taking such grave action, the disciplinary authority should have followed the simple dictum that "If you want to penalise somebody, you must first fix up the responsibility". This has not been obeyed at all. This has been recently discussed and approved by the Parliament in the case of the death of Chief Justice of India in London where it was alleged by some member of Parliament that Mr. Kuldip Nayyar, the High Commissioner of India in U.K., was solely responsible for the ~~the~~ delay in giving treatment to the Chief Justice Mr. Savyasaachi Mukherjee - and he should be suspended immediately. It is evident that this fixation of responsibility in the petitioner's case was not undertaken at any stage by the authorities concerned, it was a denial of natural justice to the petitioner and initiation of the disciplinary proceedings was ab-initio void and is liable to be quashed. It is also stated that the comparison between a certain group of cases where the approval was given immediately with other group of cases where approval was delayed does not, *ipso facto*, bring out the fact that an offence has been committed. These two groups of cases can be juxtaposed only when the petitioner <sup>is</sup> charged that he gave his approval in the first group for some personal gain or benefit and the delay was caused in the later group for such benefit or gain which <sup>was</sup> not forthcoming. Otherwise the allegation is based on pure suspicion and surmise which is not sustainable at all. It is wrong to say that apparently the applicant himself was responsible for the delay without considering the facts and circumstances of the cases keeping in mind <sup>that</sup> the matter was being put up before the applicant by the Inspector and office staff for his signature and the contribution by these people has not been considered at all while framing the charge-sheet against the applicant.

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10.i) In response to para (I), it is submitted that the case of Shri M.N.Qureshi has been specifically mentioned because under the similar circumstances the CAT's additional Bench at Ahmedabad did not allow the department to proceed with the disciplinary action against Shri M.N.Qureshi though it was claimed by the department that in as many as 54 cases the assessments was completed jeopardising the interest of the department. Apart from the quasi-judicial part of the action as mentioned by the applicant it is submitted that the applicant was a fairly senior officer with a status and he should have the independence of deciding within his discretionary powers where certain queries should be raised in respect of certain cases for his satisfaction that the assessment resulting in refunds has been completed correctly in accordance with the provisions of I.T.Act, 1961. It is never expected that the general amnesty should be granted against any action done by a quasi-judicial authority but because of the special nature of the circumstances in this case it <sup>is</sup> argued that the disciplinary action has not been validly initiated. It has been contested by the applicant that no misconduct has been committed by him by raising relevant and valid queries and delaying the approval to refunds till those queries are met by the Income tax Officers. Reliance has been placed by the petitioner on the decisions of the Supreme Court of India in the case of J.A.Ahmed and A.L.Kalra for this purpose. Further it has been mentioned that the decision of Hon'ble tribunal in the case of Shri P.D.Khandelwal v. Union of India (O.A.No.166 of 1988) another Dy.C.I.T. in the very same department has been relied upon as the same is squarely applicable in the applicant's case. The main point of the applicant's submission was that delay itself should not be the grounds for the disciplinary action without linking it to any personal gain or benefit obtained by the applicant.

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11. 10.j) In response to Para (J) of the reply, it is submitted that in this case similar conditions as in Shri Khandelwal's case are prevailing for considering the action taken. It is not only quasi-judicial act which has been stressed but reliance has been placed on the aspect that the misconduct as mentioned in Rule 3 of CCA CCA( CCS) Rules <sup>is</sup> in general nature and that can be subject matter of ACR for the year, but it cannot be the subject matter of disciplinary proceedings. In the petitioner's case, it is now stated by the department that because of the delay in giving approval to refunds, a mention has been made in the K.C.R. of the petitioner for 1986-87 to the effect that his integrity was doubtful and possibly for that remark, the promotion also has been denied - all these are more than enough for the so called misconduct and continuance of the disciplinary proceedings has got no valid reason - this has been precisely observed by the Supreme Court in J.A. Ahmed's case.

12.j) In response to Para (K) of the reply, it is vehemently objected to the conclusion that the applicant was primarily responsible for the delay and reliance is placed on the details submitted in para para 6.11 of the petition. The reply has not covered the petitioner's contentions and this general remark does not controvert his submissions in the petitions.

13.12. In response to para (L) of the reply it is submitted that the full details of the cases where refund has been delayed have been given in the annexure to the petition being annexure-A-5 and it is not correct to say that full details have not been given. In addition instances of delay had been cited from the 14 cases themselves ~~is~~ given in the charge-sheet, there has been clear discrimination, it has been contended and for which alone disciplinary proceedings are to be quashed.

14. In response to para (M) of the reply, it is averred that the delay caused by the ITO was irrespective of the refund only and this delay on their part cannot be ignored thereby making the charge discriminatory and unjust. If the delay has been committed before referring the matter to the applicant, the delay also should have been treated in the same fashion, and it has been specifically pointed out by the applicant that the charge was discriminatory and unjust and hence ab-initio void. By ignoring the ~~first~~ first delay by the ITO in the very same cases the department has acted against all norms of justice, equity and fairplay and as such the charge is bound to fail. The compartmentalisation as made by the reply goes to prove the ~~position~~ discriminatory attitude of the authorities who are using double standard for the same kind of offence committed by the officials of the same or equal status.

15. 14. i) In reply to para (N) of the reply, it is submitted that so called irregularities are not grave offences at all as has been depicted by the disciplinary authority. Moreover, the attribution of dis-honest motive has not been borne out by the facts mentioned in the charge sheet. The repetition of the word 'dishonest motive' does not go to strengthen the charge without supporting it by specific instances. It rather shows the biased and closed mind of the disciplinary authority and the baselessness of the charge. The contention that the applicant will have full opportunity to defend himself through the inquiry being held by the Commissioner for Departmental Inquiry who belongs to the Central Vigilance Commission, and independent Agency, cannot be the reasons for not admitting the petitioner's case. It is submitted that the so called other remedies as provided by the inquiry by the commissioner of Departmental Inquiries (Central Vigilance Commission) are but illusory. It is also submitted that the petitioner has already been penalised heavily as a result of suspension and disciplinary action. The promotion is delayed for more than 4 years and his juniors belonging to 1970 batch (his being 1965 batch) have been promoted in exclusion of himself.

It is also seen that the department was in no hurry for finalising the said disciplinary proceedings. The department has already delayed the matter in the framing of charge and the appointment of the Inquiry Officer. The first hearing took place only in August 1989, though the charge sheet was served on the applicant in March 1988. The fact that the petitioner's date of retirement is fast approaching also should be kept in mind that he should not wait endlessly for the finalisation of disciplinary proceedings. It amounts to denial of justice. As such the Hon'ble CAT may kindly pass suitable orders for the grievances raised by the petitioner before it. In this connection, another very important point is also to be noticed so far the part which has been played by the Central Vigilance Commission in respect of advising the disciplinary authority has to be viewed with the decision of the Hon'ble Gujarat High Court in A.K. Roychaudhuri v. Union of India 1982(I) 814 Page 186).

Roychaudhuri successfully contended that the opinion of the Central Vigilance Commission which was taken into account by the disciplinary authority was not made available to him and as such the principles of natural justice had been violated, and subsequently the decision of disciplinary authority was bad in law. The High Court made the following observations after hearing both the sides -

"From what has been quoted above, it is clear that the comments and opinion of the Central Vigilance Commission were taken into account by the disciplinary authority. It cannot be for the department to say that as these comments and opinion and recommendations are confidential in character, they are not to be brought to the notice of the delinquent concerned. In judicial or quasi-judicial inquiries, there is nothing that can be said to be confidential. Any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in this regard. It is well nigh possible that some other record also might have been

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made available to the Central Vigilance Commission in the form of earlier confidential records of the employee concerned. The opinion of an august body like the Central Vigilance Commission would obviously carry great weight with the disciplinary authority in reaching a final conclusion. At any rate, the possibility of such an influence cannot be negatived."

ii) The decision of the Gujarat High Court is fully supported by the decision of the Supreme Court in Collector of Central Excise and Land Customs v. Sanvarmal Purohit 1969 Assam L.R. 11 in which it is observed "A quasi-judicial authority would be acting contrary to the rules of natural justice if it acts on information collected by it which has not been disclosed to the party concerned and in respect of which full opportunity of meeting the inference which arises out of it has not been given." Similar views expressed by the Supreme Court in Executive Committee U.P. Warehousing Corporation v. Chandra Kirit Tyagi AIR 1970 SC 1244. It is submitted that in the petitioner's case also the opinion of the Central Vigilance Commission has already been taken into consideration for first passing the order of suspension and subsequently for framing the charge-sheet. At no stage this opinion of the Central Vigilance Commission and the materials supplied to them have been provided to the petitioner for his inspection so that he could effectively frame his defence. As the above decisions of both Gujarat High Court and Supreme Court are applicable in the petitioner's case, the Hon'ble CAT may kindly consider the case as on the basis of violation of natural justice in initiating the disciplinary proceedings. It is not true that no special protection is available to any official belonging to the Schedule Castes and Schedule Tribes. The Home Ministry as well as the Ministry of Finance have issued many orders and circulars that proper care should be taken in

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extending help to the officials to of above group for all matters so that they can successfully join the main stream.

iii) It is also submitted that the disciplinary authority in reality as evident from the written reply, did not form its own *prima facie* opinion but was influenced by the finding of the Central Vigilance Commission and having accepted such finding issued the charge-sheet. hence the charge is to be quashed. *Surendra Chandra Das v. State of West Bengal*, 1982 LAB IC 574 : 1981 (S) SIR 737 and 681.

16. ~~15.~~ In response to Para(0) of the reply it is submitted that most of the incidents mentioned in the charge-sheets have taken place between June 1985 and October 1986. It is more than 4 years old and it cannot be said that the disciplinary proceedings have been initiated within a reasonable time. It is already quite late and it will be difficult to remember all the facts in connection with the matters mentioned in the charge. It is also submitted that the department has relied on the oral evidence of Shri K.K. Thankappan, the then Inspector of Income tax, Com. Range-II, Bombay. In addition to documentary evidence there are many more things in connection with the placing of the relevant records before the petitioner by his office staff as well as by the same inspector who has since been retired from service. It will be well nigh impossible to keep the relevant things in memory for ~~one~~ an effective defence. This amounts to denial of natural justice to the petitioner. The department also will not be in a position to produce the witness - Shri K.K. Thankappan for cross examination by the petitioner. For this also, the disciplinary proceedings are liable to be quashed.

17. ~~16.~~ In response to para(P) of the reply, it is reiterated that it is not understandable how the DPC held for confirmation as well as for conferring the selection grade to the petitioner could miss the adverse comments (not communicated to the petitioner till date) in the ACR for 1986-87 as claimed by the department in the reply submitted. To clarify

115 (22)

the exact position, the Hon'ble CAT may kindly call for the original ACRs for all the years as well as the proceedings of the DPC for the above purpose ~~for~~ their verification. The Vigilance file maintained by CBDT in original and the Central Vigilance Commission's reply may also be called for to see by itself how the contradictory things have happened as they reply submitted by the department has not revealed many things. These documents are to be verified for finding out whether the principles of natural justice have been observed in initiating the disciplinary proceedings. The department has also given an assurance for producing all the records before the Hon'ble Tribunal to show that all actions taken are bonafide and justified by facts and circumstances of the case. The petitioner has not been communicated with any order for treating the period of suspension period as not being on duty though the proposal was sent to the petitioner for raising ~~the~~ his objection, if any, to that action. A reply was sent by the petitioner but till date no order in this respect passed by the Competent Authority has been communicated to the petitioner though no payment has been made for the period of suspension and no earned leave has been allowed to accumulate for the said period. Once more the petitioner wants to say that this action of withholding the pay and denying other benefits has been arbitrary and illegal and the same action is not supported by a proper order to be passed by the Competent Authority as per CCS(CCA)Rules. The department ~~may~~ kindly be ordered to make immediate payment of the salary for the period of suspension with interest from the date the same was payable.

17. In response to Para (Q) of the reply, the petitioner submits that all the <sup>reliefs</sup> ~~relieves~~ sought may kindly be allowed as it has been shown that all the <sup>reliefs</sup> ~~relieves~~ are available to the petitioner as the disciplinary proceeding is ab-initio void and illegal.

19. In response to para(R) of the reply the petitioner submits that the interim relief also may kindly be granted. In view of this rejoinder, the disciplinary proceedings may kindly be quashed with specific directions to the reliefs sought by the petitioner.

20. The applicant ~~reserves his~~ right to file a detailed affidavit as on this day 15th of November, 1990.

(J. MALLICK)

Applicant,

: V E R I F I C A T I O N :

I, J. Mallick, S/O Late Barada Kanta Mallick, working as Deputy Commissioner of Income tax(OSD), Audit, a resident of Ahmedabad, do hereby state that the contents of para 1 to 20 are true on legal advice and that I have not suppressed any material facts.

Ahmedabad,  
23rd April 1991.  
15th November, 1990

(J. MALLICK)  
Applicant.

M. R. Anand.

By M. R. Anand  
Advocate  
Applicant's Advocate

Reply/Regoinder/written submissions  
filed by M. R. Anand...  
learned advocate for petitioner /  
Respondent with second set.  
Copy served/not served & other side

Dt. 23/4/91, Dy. Registrar C.A.T (J)  
Ahmedabad Bench

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD.

TS/4

RA/MA/QA/PA/ 165 1991. in OM 535/89.

Jairam Mallik

Applicant(s).

Mr. AronelAdv. for the  
petitioner(s)

Versus

Union of India & Ors.

Respondent(s)

R.P. BhattAdv. for the  
Respondent(s)

SR.NO.	DATE	ORDERS
	21/5/91	Interim Relief. (Copy Served) F.O.  Given 21/5/91

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: \_\_\_\_\_  
of \_\_\_\_\_

Miscellaneous Petition No: 145  
of 91

Shri Janinder Mallik Petitioner(s)

Versus.

Union of India Respondent(s).

This application has been submitted to the Tribunal by Shri M R Anand. Under Section 19 of the Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature.

*copy*  
ASSTT: *Document not certified as true copy*

S.O.(J) : *24/4*

D.R.(J) : *24/4*

KNP/15391/\*\*\*\*

15/3/91

mnos 178/91  
15/4/91

(82)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH AT AHMEDABAD.

MISC. APPLICATION NO. 145 OF 1991

IN

ORIGINAL APPLICATION NO. 535 of 1989

BETWEEN

Jaidev Mallick  
S/O Late Baradakanta Mallick,  
Dy.C.I.T.(OSD), Audit,  
Aayakar Bhavan,  
Ashram Road,  
Ahmedabad 380009.      ...      ... Applicant

AND

1. The Government of India,  
Notice of the petition to be  
served through the  
Secretary, Ministry of Finance,  
Dept. of Revenue,  
New Delhi.
2. The Chief Commissioner (Administration)  
of Income-Tax, Ahmedabad.
3. Central Board of Direct Taxes,  
Ministry of Finance,  
North Block, Central Secretariat,  
New Delhi-110001.      ...      ... Respondents.

APPLICATION FOR INTERIM RELIEF  
BY THE APPLICANT ABOVENAMED.

MOST RESPECTFULLY SHEWETH:

The applicant is the petitioner in the  
abovementioned petition which is admitted by this  
Hon'ble Tribunal and is awaiting final hearing. By  
the same petition, the petitioner has challenged the  
institution of the departmental inquiry against him

Copy seen to  
Mr. R.P. Patel  
Mr. M.T. Patel

MDR

in a matter where he was simply exercising quasi-judicial authority as a Tax Officer and where his actions are subject to appeal and/or revision.

The said inquiry was instituted by a Memorandum dated 16-2-1988 (Annexure A-2 of the O.A.).

2. The applicant submits that one of the prayers in the above mentioned O.A. is that the petitioner's case may be considered for promotion to the higher post of Commissioner of Income-Tax as the post of C.I.T. is a very next higher post.

3. As far as the departmental inquiry is concerned, after the initial preliminary hearing, no hearing has taken place and no evidence has been taken. Meanwhile, the petitioner has been superceded as many as three times during this period. The applicant, therefore, by his representation dated 4-12-1990 approached the Respondent No.3 authority, pointing out that a number of his juniors have been promoted to the higher post of C.I.T. The petitioner also pointed out that his seniority has been determined as per the order of the Chandigarh Bench of this Hon'ble Tribunal and he should be considered for promotion on that basis. The petitioner also is requesting to review the D.P.C. A true copy of the representation dated 4-12-1990 submitted through proper channel is annexed hereto and marked As Annexure 'A'.

ANNEXURE 'A'

(S) (81)

4. The petitioner received a reply dated 15-3-1991 wherein he was told that as far as D.P.C. held in October 1986 is concerned, he was not recommended for promotion by the Revised D.P.C. However, as far as D.P.Cs. held in September 1987 and April 1988 are concerned, the recommendations of this D.P.Cs. have been kept in "Sealed Cover". This had been solely due to the pending departmental inquiry as there is nothing else against him. The true copy of the reply dated 15-3-1991 is annexed hereto and marked as Annexure 'B'.

ANNEX. 'B'

5- The applicant submits that the reply at Annexure 'B' is astonishing because at least as far as September 1987 D.P.C. is concerned, at that time when there was no departmental inquiry or anything pending against the petitioner, there could have been no question of keeping the recommendations of the D.P.C. in the 'Sealed Cover'. The petitioner submits that in the case of C.O. Arumugam and Ors, the Hon'ble Supreme Court clearly deprecated the practice of following the 'Sealed Cover' practice unless the charge-sheet is issued. The Supreme Court directed that promotion must be given to the wronged officer from the date his immediate junior was promoted. This judgment of the Hon'ble Supreme Court was also followed up by the Principal Bench of the Hon'ble Tribunal in the case of Shri B.G. Agarwal vs. Union of India wherein it is observed that the Sealed Cover procedure cannot be followed unless the charge-sheet has been issued to the government servant concerned.

before convening meeting of the D.P.C. Accordingly, an interim direction was given directing the respondent authorities to open the Sealed Cover and give the consequential promotion orders to the applicant therein which would also culminate in the promotion to the post of Commissioner of Income-Tax.

A true copy of the interim order passed by the Principal Bench of this Hon'ble Tribunal on 12-2-91 is annexed hereto and marked as Annexure 'C'. The Principal Bench has repeated this interim order in other cases including the cases of one Shri S.K. Sharma vs. Union of India and Shri S.K. Bhatnagar vs. Union of India, where also the interim directions were issued for the applicant's case for the post of C.I.T.

ANNEX. 'C'

5. The applicant submits that it is an undisputed fact that the departmental inquiry against the petitioner was instituted by Memorandum dated 16-2-1988 (vide Annexure A-2 of O.A.). It is also an admitted position that in September 1987 when the D.P.C. met, no charge-sheet was issued to the petitioner. In the above mentioned Arumugam's case, the Hon'ble Comt has specifically laid down this principle observing that "to avoid arbitrariness it would be better to follow certain uniform principle" and accordingly laid down that the Sealed Cover procedure should be observed only when either departmental inquiry is instituted or when the prosecution is launched and not otherwise. This directive of the Hon'ble Supreme Court is followed by the respondents authorities as a matter of "uniform principle". The Principal Bench of this Hon'ble Tribunal has also uniformly followed

88/82

this practice. The petitioner is therefore entitled to same protection as an officer identically placed.

6. The applicant submits that the reply at Annexure 'B' is therefore violative of the petitioner's fundamental rights of equality under Articles 14 and 16 of the Constitution of India. It is also disrespectful of the judgments and orders of Hon'ble the Supreme Court of India and particularly of this Hon'ble Tribunal because these very respondents authorities were party before the Principal Bench of the Hon'ble Tribunal at New Delhi.

7. In the above mentioned premises, the applicant prays:

(A) That this Hon'ble Tribunal may direct the Respondents to open the Sealed Cover and promote the petitioner to the post of Commissioner of Income-Tax from the date of his immediate junior was promoted.

(B) Grant any further relief or remedy in the interest of justice as this Hon'ble Court deems fit.

Ahmedabad:

Date: 15/4/1991

  
\_\_\_\_\_  
Applicant

Verification

I, Jaidev Mallick, S/O Late Baradkanta Mallick, working as Dy.C.I.T.(OSD), do hereby verify that the contents of paragraphs 1 to 7 are true to my personal knowledge and belief and that I have not suppressed any material facts.

  
\_\_\_\_\_  
M. R. Anand

  
\_\_\_\_\_  
M. R. Anand  
Advocate for Applicant

Filed by Mr. M.R. Anand  
Learned Advocate for Petitioners  
With second set & ~~2~~ copies  
Copies copy served/not served (to  
other side)

10/14/11, By Registrar C.A.T. (1)  
Bud Bench

in Gaia Law

BY R.P.A.D.

No. DC(IT)/(OSD)/JM/Audit/90-91

Annexure 'A'

Office of the Deputy Commissioner of  
 Income tax(OSD), Audit, Room No. 209,  
 Annex to J Block, Aayakar Bhavan  
 Ashram Road, Ahmedabad. 380 009.  
 Dated the 4th December, 1990.

The Secretary,  
 Central Board of Direct Taxes,  
 New Secretariat Building, North Block,  
 New Delhi. 110 001.

(SUBMITTED THROUGH PROPER CHANNEL)

Sir,

Sub:- Restoration of Seniority in the cadre of  
 Deputy Commissioners of Income tax -  
 Re. Shri Jaydev Mallik - Review D.P.C.  
 ....

Kindly refer to your P.No.C.18011/4/87-AD.VI, Govt. of India,  
 Ministry of Finance, Department of Revenue, New Delhi dated 18.1.1990.

2. It is seen that my seniority has been restored to Sr. No. 137-C in the Civil List as on 1.9.1984. I alongwith Shri Panjal and Shri J.L. Negi have been placed above Shri Satrajit Chaudhuri placed at Sr. No. 138. The restoration of the above seniority in the cadre of Deputy Commissioners of Income tax entitles me at once to be considered by the Review D.P.C. so that the consequential effects flow from the above order and I get the benefit of promotion to the cadre of Commissioner of Income tax as my junior Shri Satrajit Chaudhuri has already been promoted with effect from February 1987 as a result of D.P.C. held in October 1986. It is very sad that the said restoration of Seniority to me has been given effect to after a lapse of more than three years as the Hon'ble CAT, Chandigarh has passed the order bearing O.A.No.173 of 1986, date of decision being 20.11.1986. It has been received by the CBIT before January 1987. Apart from this inordinate delay in giving effect to the said order, it is noticed with utter despair and dismay that the Review D.P.C. for my promotion to the post of the C.I.T. with effect from the date on which my junior as above has been promoted, has not taken place so far though I have been waiting for the same for about four years after the passing of the order by the CAT, Chandigarh and one year after your own order.

You are, therefore, requested to arrange for the Review D.P.C. for my promotion to the cadre of C.I.T. as the same has been delayed inordinately for no fault of mine. The result of the said Review D.P.C. may kindly be intimated to me at an early date.

Yours faithfully,

(J. MALLICK)  
 Deputy Commissioner of Income tax(OSD)  
 Audit, Ahmedabad.

Confidential

18/3/91

Annexure

B

No. Est. 49-1/90

Office of the  
Chief Commissioner of Income-tax,  
Ahmedabad, Date: 15th March, 1991.

7  
89

To

Shri Jaidev Mallick,  
DC(IT)(OSD-Audit)  
Ahmedabad.

Sub: Holding of review of DPC on restoration  
of Seniority in the grade of Deputy  
Commissioner of Income-tax—Shri  
Jaidev Mallick, Deputy Commissioner  
of Income tax—  
.....

Please refer to your letter No. DC(IT)(OSD)/JM/  
Audit/90-91 dated 4.12.1990, on the above subject.

2. The Board have informed that consequent upon the revision of your seniority in the grade of Deputy Commissioner of Income-tax in compliance with CAT, Chandigarh's directions, a review DPC was held to consider your case for promotion to the grade of Commissioner of Income-tax on the basis of DPCs held in Oct. 1986, Sept. 87 and April '88. Board have, however, regretted that you have not been found fit for promotion on the basis of DPC held in Oct. 1986 as your performance as reflected in your ACRs was not upto the mark. As regard DPCs held in Sept. 1987 and April '88, the recommendations of these DPCs have been kept in 'Sealed Cover' and will be acted upon as and when you are cleared from the vigilance angle.

6/3/91  
Dhank

(V.J. BHAI) AC(IT) ADM-I  
for Chief Commissioner of Income-tax  
Ahmedabad.

Annex C  
85

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

JUDL-II

Faridkot House,  
Copernicus Marg,  
New Delhi-110001.

FROM:

Deputy Registrar (Judl.)  
Central Administrative Tribunal,  
Principal Bench, New Delhi.

Dated: 13/2/91

TO,

1.

Shri B.G. Agarwal,  
Through Shri P.P. Khurana,  
Counsel for the Applicant,  
309, Lawyers Chambers,  
Delhi High Court,  
New Delhi.

•••••Applicant.

Shri B.G. Agarwal

REGN. NO. DA- 372/91

\*\*\*\*\*APPLICANT (s)

Vers:

Union of India & Ors.

Sir,

\*\*\*\*\*RESPONDENT (s)

I am directed to forward herewith a copy of 38888888/ord/s  
dated: 12/2/91 Passed by this Tribunal in the above mentioned  
cause for information and necessary action, if any.  
Please acknowledge receipt.

\*P\*



Yours faithfully,  
  
Mr. SHARMA  
Section Officer (Judl-II)  
For Registrar.

OA/XXXXXX No. 372/91 19

Sh. B.G. Aggarwal  
APPLICANT(S)Sh. P.P. Khurana,  
COUNSEL

VERSUS

U.O.I & anr.  
RESPONDENT(S)

COUNSEL

J  
88

Office Report

Orders

12.2.91

Applicant through Shri P.P. Khurana, Counsel.

Heard.

Admit.

Issue notice to the respondents to file their counter-affidavit within four weeks with a copy to the applicant, who may file rejoinder, if any, within two weeks thereafter. List for further directions on 24.4.91.

As regards interim relief, issue notice to the respondents, returnable on 26.2.91.

The learned counsel of the applicant states that the Departmental Promotion Committee to recommend persons for appointment to the post of Commissioner of Income Tax met on 20.9.90. The Committee considered the suitability of the applicant/<sup>also</sup> for promotion to the said post but placed the <sup>as</sup> assessment made by it in a sealed cover. The applicant has not, therefore, been promoted. The learned counsel has stated that no disciplinary proceedings were pending against the applicant on 20.9.90. Nor any chargesheet had been filed in a criminal <sup>Court</sup> ~~Court~~ against him. He has, however, been given a memorandum on 22.4.88 calling for his explanation in regard to certain alleged misconduct. Pursuant to this memorandum, no disciplinary enquiry has been initiated against the applicant.

Having regard to the decision of the Supreme Court in C.O. Arumugam's case (1990) 1 SLR 288 and Bani Singh's case (AIR 1990 SC 1308), the respondents are bound to consider the case of

## Office Report

## Orders

promotion of the applicant if ~~there~~ <sup>as</sup> no disciplinary proceedings were pending against him on the date of meeting of the Departmental Promotion Committee. In view of this, as an interim measure, we direct that the respondents shall open the sealed cover immediately and give effect to the recommendations made by the DPC in regard to the suitability of the applicant for promotion within a period of one month from the date of receipt of this order.

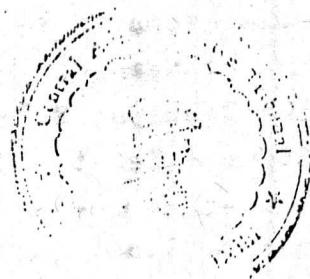
Any promotion made will be subject to the result of this application.

Issue date.

( D.K.CHAKRAVORTY )  
MEMBER  
22-2-91

( P.K.KARTHA )  
VICE CHAIRMAN  
12-2-91

Act 2/21



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

Page No. *80/1*

DATE REC'D No. 230/91 19

Shri S.K.Bhatnagar  
APPLICANT(S)

Sh. P.P.Khurana,  
COUNSEL

U.O.I & anr. | VERSUS

RESPONDENT(S)

COUNSEL

Date	Office Report	Orders
		<p>28.1.91 Applicant through Shri P.P.Khurana, Counsel.</p> <ul style="list-style-type: none"><li>Heard the learned counsel.</li></ul> <p><b>[Admit]</b></p> <ul style="list-style-type: none"><li>Issue notice to the respondents to file their counter-affidavit within four weeks with a copy to the applicant, who may file rejoinder, if any, within two weeks thereafter. List before the DR(J) on 12.4.91.</li><li>As regards interim relief, issue notice to the respondents, returnable on 1.2.91.</li></ul> <p>The learned counsel of the applicant states that the applicant was empanelled in 1988 after his case for promotion to the post of Commissioner of Income Tax was recommended by the DPC and approved by the AEC. He has, however, not been promoted as Commissioner of Income Tax. In the meanwhile there was some litigation in the Jabalpur Bench of the Tribunal and the Supreme Court. In 1990, the respondents served on the applicant a memorandum asking his explanation in regard to certain <sup>alleged</sup> acts of misconduct to which he sent a reply on 18.5.90.</p> <p>The learned counsel of the applicant further states that no charge-sheet has been issued to him at any point of time. He states that 12 persons junior to the applicant have been promoted by order dated 16.4.90.</p> <p>In view of the decision of the Supreme Court in <i>Ramugam</i>, (1990) 1 SLR 288 and <i>Bayani Singh</i>, AIR 1988 SC 1308, the results of the DPC cannot be kept in a sealed cover unless a charge-sheet had been issued to the Government.</p>

Date	Office Report	Orders
		<p>servant concerned before convening of the meeting of the DPC.</p> <p>We, therefore, direct as <sup>an</sup> interim measure that the respondents shall open the sealed cover in regard to the application for promotion of the applicant to the grade of Commissioner of Income Tax and, in case, the DPC found him fit for promotion, they shall give effect to the recommendations of the DPC within a period of one month from the date of communication of this order.</p> <p><u>Issue date.</u></p> <p><u>Chakravarty</u> ( P.K. CHAKRAVARTY ) MEMBER</p> <p><u>P.K. Kartha</u> ( P.K. KARTHA ) VICE CHAIRMAN</p> <p>28/11/1987</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD

(88)

OA/TA/MA/RA/C.A. No.

1/91

191 in OA/535/89

Jaider Mallik

APPLICANT(S)

MR Anand

COUNSEL

VERSUS

Union of India & Ors

RESPONDENT(S)

AP Bhai

COUNSEL

Date	Office Report	Orders
	Deleining Relef 21/6/88	Endorsement of copy servd made by applicant 21/6/88 D. Bhai 21/6/88

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

of

Miscellaneous Petition No: 191

of 91

Shri Jaiyer Mollick

Petitioner(s)

Versus.

Union of India &c Respondent(s).

This application has been submitted to the Tribunal by Shri Mr. Anand.

Under Section 19 of the Administrative Tribunal Act, 1985. It has scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature. Endorsement of copy served made by applicant.

ASSTT:

S.O.(J) : 1316

(J) : 1316

91/89

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH AT AHMEDABAD.

MISC. APPLICATION NO. 191 OF 1991  
IN

ORIGINAL APPLICATION NO. 535 of 1989

BETWEEN

Jaidev Mallick,  
S/O Late Baradakanta Mallick,  
Dy.C.I.T.(OSD), Audit,  
Aayakar Bhavan,  
Ashram Road,  
Ahmedabad 380 009.

.. .. Applicant

AND

Union of India & others .. .. Respondents.

PETITION FOR DELETION OF RELIEFS NOS.(2),(3),(4)

IN PARA 7 of O.A.

MOST RESPECTFULLY SHEWETH:

*COPY Served to  
Mr. R.P. Patel*  
The petitioner had filed an O.A. on titled above,  
praying for the following reliefs:

**"7. Relief Sought:**

In view of the facts and grounds mentioned hereinabove,  
the petitioner prays that the Hon'ble Tribunal may be pleased  
to :

- (1) To quash and set aside the impugned order at Annexures  
A-2 and A-4 as illegal, unconstitutional, without  
jurisdiction, null, void and of no effect whatsoever.
- (2) To consider the petitioner's case for releasing the  
monthly benefits wrongfully withheld during the  
suspension period i.e. from 18th Sept. 1987 to 27th  
July, 1988.
- (3) To consider the petitioner's case for releasing annual  
increments wrongfully withheld since 1987 due to  
wron ful institution of the inquiry.

: 2 :

(4) To consider the petitioner's case for promotion to the higher post from the date from which his immediate juniors were considered for promotion to the higher post but the petitioner's case was not considered due to pending inquiry.

(5) To grant any other appropriate relief/remedy deemed just and proper by the Hon'ble Tribunal in the facts and circumstances of the case."

2. The petitioner is advised to delete reliefs Nos. (2), (3) and (4) mentioned hereinabove. In view of this, it is prayed that this Hon'ble Tribunal may allow the petitioner to delete reliefs (2), (3) and (4) in para 7 of the O.A.

Ahmedabad:

Date: 11/6/1991

*M. R. Anand*  
Advocate for ~~Applicant~~  
(J. MALLICK)  
APPLICANT

#### VERIFICATION

I, Jaidev Mallick, S/O Late Baradakanta Mallick, working as Dy.C.I.T.(OSD), do hereby verify that the contents of paragraph 1 & 2 are true to my personal knowledge and belief and that I have not suppressed any material facts.

*(J. MALLICK)*  
Signature of the Applicant.

Filed by Mr. *M. R. Anand*  
Learned Advocate for Petitioners  
with second set & ..... copies  
copies copy served/not served to  
other side

Dt. 11/6/91 *M. R. Anand*  
Dy. Registrar G.A.T (J)  
Abaq Bench

AHMEDABAD BENCH

Application No. 24152193 in 041535/89 of 19

Transfer Application No. \_\_\_\_\_ Old w.Pett.No

CERTIFICATE

Certified that no further action is required  
tobe taken and the case is fit for consignment to the  
Record Room (Decided).

Dated: 08/04/94

Countersigned :

ceceliaf

Signature of the  
Dealing Assistant.

Section officer/Court officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT NEW DELHI AHMEDABAD

CAT/J/10

## INDEX SHEET

CAUSE TITLE... 24152193 in... 001533188... OF 198□.

**NAMES OF THE PARTIES.....** U. S. I. & O. I.

## VERSUS

MR. Jayder Hellrele

## PART A B & C

SERIAL NO.	DESCRIPTION OF DOCUMENTS	PAGE
1	RA	168
2	683 Mals <del>193</del> 193	916 13
3	O. O. dtd. 04/03/94	

## CONTINUED INDEX SHEET

## DESCRIPTION OF DOCUMENTS

1. Judgment / Order by
  - (i) Hon'ble Mr. \_\_\_\_\_
  - (ii) Hon'ble Mr. \_\_\_\_\_
 and
2. Both the aforesaid Members are functioning in this Tribunal.
  2. Hence to be placed before the said Members i.e., Hon'ble Mr. \_\_\_\_\_ & Hon'ble Mr. \_\_\_\_\_
3. Hon'ble Mr. \_\_\_\_\_ still belongs to Local Bench but Hon'ble Mr. \_\_\_\_\_ is now a Member/V.C. of \_\_\_\_\_ Bench.
  3. Hence may be sent for consideration by circulation to the said Members i.e., Hon'ble Mr. \_\_\_\_\_ & Hon'ble Mr. \_\_\_\_\_
4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.
  4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any 2 Members of this Bench.
5. Hon'ble Mr. R. C. Bhatt, Member (S) has ceased to be Member of Tribunal but Hon'ble Mr. M. D. Kothekar, Member (A) is available in this Bench.
  5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. \_\_\_\_\_ who is available in this Bench and of any other Member of this Bench for preliminary hearing.
6. Both the aforesaid Members are now Members of other Benches namely \_\_\_\_\_ and \_\_\_\_\_ Benches.
  6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.
7. The case is not covered by any of the above contingencies.
  7. Therefore, orders of the Hon'ble ~~V.C.~~ Chairman are required to be obtained by Hon'ble Chairman.

Diariised under  
MA St. No. 523 of 23-12-1993

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMED BAD

OA/TA/MA/RA/C.A. No. RA/52/93 in OA/535/89

Union of India & Ors. MR. M.R. BHATT  
APPLICANT(S) COUNSEL

VERSUS

MR. Jaydev Mallik

RESPONDENT(S) COUNSEL

DATE	Officer Report	Orders
9-11-93	<p><u>REVIEW</u> <u>Reconsideration</u></p> <p>Under <u>obj.</u></p>	<p>Issue notice intimating date for orders dtg 23-11-93 in form IV</p> <p>JK 2-12-93</p> <p>Order of the Court, dtg <u>16/12/93</u> may pl. be perused.</p> <p>Notice in form IV intimating may be issued to the applicant of dtg i.e. <u>6th/12/93</u> <u>Shri Mr. Bhattacharya</u></p> <p>Shri <u>JK Misra</u> M/s, who has R/t Chennai 2-12-93</p> <p>JK AR(C) 2-12-93</p> <p>Applicant signed the</p> <p>28/2</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD

Miscellaneous application No. \_\_\_\_\_ of 1993  
in  
O.A. No. 535 of 1989

- 1) The Government of India  
through The Secretary,  
Ministry of Finance,  
Dept. of Revenue, New Delhi.
- 2) The Chief Commissioner (Admn.)  
of Income-tax, Ahmedabad.
- 3) Central Board of Direct Tax,  
Ministry of Finance,  
North Block, Central Secretariat,  
New Delhi.

.. Applicants  
(ori. respondents)

v/s

Jaydev Mallick  
Deputy Commissioner of Income Tax,  
C/o. Chief Commissioner of Income Tax,  
Ayakar Bhavan, P-7 Chowringhee Square, .. Respondent.  
Calcutta.

MOST RESPECTFULLY SHEWETH:

1. The respondent herein as applicant had preferred O.A. No. 535 of 1989 praying that the Hon'ble Tribunal may be pleased to set aside the orders at Annexure A2 and A4 i.e. Memorandum dated 16/2/88 and the order appointing the Enquiry Officer. The Hon'ble Tribunal by order dated 9/8/90 was pleased to admit the application but refused to grant interim relief.
2. The enquiry proceedings thereafter proceeded further. The application was listed before the Hon'ble Tribunal on 21/7/1993. The advocate for the applicant

2  
is exonerated from the charges levelled against him, the application be disposed off accordingly. The Hon'ble Tribunal therefore was pleased to dispose off the application by passing the following order:-

"As the applicant is exonerated from the charges, the impugned orders Annexure A-2 & A-4 no longer remain in force and have no legal effect at all. The application is disposed of accordingly. No order as to costs."

3. The applicants however submit that the Hon'ble Tribunal has stated that "both the Learned advocates have made a statement at the Bar that the applicant has been exonerated of all the charges in the disciplinary proceedings and therefore, the impugned order at Annexure A-2 and A-4 have now no legal effect". In this connection it is humbly submitted that at the time of hearing, in fact, the advocate of the respondent herein made the aforesaid statement keeping in view the inquiry officer's report on the basis of which the advocate of the applicant submitted before the Hon'ble Tribunal that the applicant was ~~enumerated~~ exonerated from charges levelled against him.

4. The applicants submit that in fact as provided under Rule 15 of the CCS (CCA) rules) after the enquiry officer submits a report to the Disciplinary authority, the disciplinary authority may or may not agree with the findings of the enquiry officer and may pass further orders as deemed fit. Extract of Rule 15 is annexed hereto and marked Annexure 'B'.

5. In view of these factual position, this Miscellaneous application for review of the order dated 21/7/93 is filed with a view to bring the Hon'ble Tribunal's notice that in fact the applicant is not exonerated of the charges and that the matter is referred to UPSC.

6. In view of the aforesated facts, the applicants humbly pray:-

(a) That this Hon'ble Tribunal may be pleased to restore the Original application No.535/89 on file and hear the same on merits.

(b) That pending the hearing and final disposal of this application, the Hon'ble Tribunal may be pleased to stay the effect and implementation of the order dated 21/7/93.

(c) That this Hon'ble Tribunal may be pleased to make such further orders and give such other directions as the nature and circumstances of the case may require.

Dated this 10th day of september, 1993.

*W*  
R.P.Bhatt & Company  
Advocates for the applicant.

Verificaiton

I, G.K.Mishra, Chief Commissioner of Income Tax  
age .54.. working as . .Chief.CIT.....  
in the office of .....  
do hereby verify that the contents of paras 1 to ...  
believed to be true on legal advice and that I have  
not supressed any material fact.

Dt: 10/9/1993.

*Ans*  
R. P. Bhatt  
Submitted,

Filed by Mr. ~~for~~ for ~~for~~  
Learned Advocate for Petitioner  
with second set & ~~not~~ served/not served  
copies copy served/not served in  
other side

DP: / / Dy. Registrar C.A.T (J)  
Dy. Registrar C.A.T (J)  
A'bad Bench

~~the~~ ~~the~~ ~~the~~ ~~the~~ ~~the~~ ~~the~~  
~~affidavit~~ is not filed. Copy of  
the orders dtd. 21.07.93 is not filed  
in second set. Copy of this application  
is not served to other side. If approve,  
we may issue objection letter.

~~copy of L.D.C.~~ (S.O.)  
22.09.93

*7/10/93*

*7/10/93*

As per Rules, affidavit is  
not must, so far as filing a  
M.A for restoration of concerned  
only one obj. raised by offi. C3  
may be communicated to the Advocate

*7/10/93*

*7/10/93*

Resubmitted.

Advocate concerned has not removed  
objection ~~not~~ in spite of issuing Remindler.  
We may place this matter before Hon'ble  
Bench for appropriate order.

~~copy of~~ (S.O.)  
03/11/93 May be placed in  
obj. board on ~~obj.~~

7-11-93

*Bhagat* 4-11-93

*Gopal* 4-11-93 DR/(J)

5 ay  
25

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL  
AHMEDABAD BENCH

O.A. No. 535 OF 1989.

~~Exhibit~~

DATE OF DECISION 21.7.1993.

Jaidev Mallick,

Petitioner

Mr. Raval for Mr. M.R. Anand,

Advocate for the Petitioner(s)

VERSUS

The Union of India & Ors.

Respondents

Mr. M.R. Bhatt,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R.Kolhatkar, Admn. Member.

Jaidev Mallick  
S/o Late Baradakanta Mallick  
Dy. C.I.T. (OSD) Audit  
Aayakar Bhavan,  
Ashram Road, Ahmedabad.

..... Applicant.

(Advocate: Mr. Raval for Mr. M.R. Anand)

Versus.

1. The Government of India  
Notice of the petition to be  
served through the  
Secretary, Ministry of Finance  
Dept. of Revenue,  
New Delhi.

2. The Chief Commissioner (Admn.)  
of Income-Tax, Ahmedabad.

3. Central Board of Direct Tax  
Ministry of Finance  
North Block, Central  
Secretariat, New Delhi.

..... Respondents.

(Advocate: Mr. M.R. Bhatt)

ORAL ORDER

O.A. No. 535 OF 1989

Date: 21.7.93

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. Raval for Mr. M.R. Anand, learned advocate  
for the applicant and Mr. M.R. Bhatt, learned advocate  
for the respondents.

2. This application under section 19 of the  
Administrative Tribunals Act, 1985, has been filed by  
Dy. C.I.T. ((OSD) Audit Ahmedabad against the  
respondents seeking the reliefs as under:

**"7. Relief Sought:**

In view of the facts and grounds mentioned  
hereinabove, the petitioner prays that the  
Hon'ble Tribunal may be pleased to:

(1) To quash and set aside the impugned order at  
Annexures A-2 and A-4 as illegal,

unconstitutional, without jurisdiction, null and void and of no effect whatsoever.

(2) To consider the petitioner's case for releasing the monthly benefits wrongfully withheld during the suspension period i.e., from 18th September, 1987 to July 27, 1988.

(3) To consider the petitioner's case for releasing annual increments wrongfully withheld since 1987 due to wrongful institution of the inquiry.

(4) To consider the petitioner's case for promotion to the higher post the from date from which his immediate juniors were considered for promotion to the higher post but the petitioner case was not considered due to pending inquiry.

(5) To grant any other appropriate relief/remedy deemed just and proper by the Hon'ble Tribunal in the facts and circumstances of the case."

The applicant has subsequently deleted reliefs para 7(2)

7(3) and 7(4), meaning thereby that the only relief

sought now is to quash and set aside the impugned order

at Annexure A-2 and A-4 as illegal, unconstitutional,

without jurisdiction, null and void and of no effect

whatsoever and for granting any other appropriate relief.

Today at the time of hearing of this application both the

learned advocates have made a statement at the bar that

the applicant has been exonerated of all the charges

in the disciplinary proceedings and therefore, the

impugned orders at Annexure A-2 and A-4 have now no legal

effect. The learned advocate for the applicant submitted

that as the applicant is exonerated from the charges

levelled against him, the O.A be disposed of accordingly.

We, therefore, pass the following order.

ORDER

As the applicant is exonerated from the charges  
the impugned orders Annexure A-2 & A-4 no longer  
remain in force and have no legal effect at all.

The application is disposed of accordingly. No order  
as to costs.

Sd/-  
(M.R.Kolhatkar).  
Member (A)

Sd/-  
(R.C.Bhatt)  
Member (J)

vtc.

Prepared by I  
Approved by J  
TRUE COPY 03/8/93

Attended 03/8/93  
by Officer (S)  
State Administrative Tribunal  
Ahmedabad branch

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD  
 Review

Miscellaneous application No. 52 of 1993  
 in  
 O.A. No. 535 of 1989



- 1) The Government of India  
     through The Secretary,  
     Ministry of Finance,  
     Dept. of Revenue, New Delhi.
- 2) The Chief Commissioner (Admn.)  
     of Income-tax, Ahmedabad.
- 3) Central Board of Direct Tax,  
     Ministry of Finance,  
     North Block, Central Secretariat,  
     New Delhi.

... Applicants

(ori. respondents)

v/s

Jaydev Mallick  
 Deputy Commissioner of Income Tax,  
 C/o. Chief Commissioner of Income Tax,  
 Ayakar Bhavan, P-7 Chowringhee Square. ... Respondent

MOST RESPECTFULLY SHEWETH:

1. The respondent herein as applicant had preferred O.A. No. 535 of 1989 praying that the Hon'ble Tribunal may be pleased to set aside the orders at Annexure A2 and A4 i.e. Memorandum dated 16/2/88 and the order appointing the Enquiry Officer. The Hon'ble Tribunal by order dated 9/8/90 was pleased to admit the application but refused to grant interim relief.
2. The enquiry proceedings thereafter proceeded further. The application was listed before the Hon'ble Tribunal on 21/7/1993. The advocate for the applicant

is exonerated from the charges levelled against him, the application be disposed off accordingly. The Hon'ble Tribunal therefore was pleased to dispose off the application by passing the following order:-

"As the applicant is exonerated from the charges, the impugned orders Annexure A-2 & A-4 no longer remain in force and have no legal effect at all. The application is disposed of accordingly. No order as to costs."

The order of this Hon'ble Tribunal is annexed hereto and marked Annexure 'A'.

3. The applicants however submit that the Hon'ble Tribunal has stated that "both the Learned advocates have made a statement at the Bar that the applicant has been exonerated of all the charges in the disciplinary proceedings and therefore, the impugned order at Annexure A-2 and A-4 have now no legal effect". In this connection it is humbly submitted that at the time of hearing, in fact, the advocate of the respondent herein made the aforesaid statement keeping in view the inquiry officer's report on the basis of which the advocate of the applicant submitted before the Hon'ble Tribunal that the applicant was exonerated from charges levelled against him.

4. The applicants submit that in fact as provided under Rule 15 of the CCS (CCA) rules after the enquiry officer submits a report to the Disciplinary authority, the disciplinary authority may or may not agree with the findings of the enquiry officer and may pass further orders as deemed fit. Extract of Rule 15 is annexed hereto and marked Annexure 'B'.

5. In view of these factual position, this Miscellaneous application for review of the order dated 21/7/93 is filed with a view to bring the Hon'ble Tribunal's notice that in fact the applicant is not exonerated of the charges and that the matter is referred to UPSC.

6. In view of the aforesated facts, the applicants humbly pray:-

- (a) That this Hon'ble Tribunal may be pleased to restore the Original application No. 535/89 on file and hear the same on merits.
- (b) That pending the hearing and final disposal of this application, the Hon'ble Tribunal may be pleased to stay the effect and implementation of the order dated 21/7/93.
- (c) That this Hon'ble Tribunal may be pleased to make such further orders and give such other directions as the nature and circumstances of the case may require.

Dated this 10th day of September, 1993.

R.P.Bhatt & Company  
Advocates for the applicant.

Verification

I, Kiran. Dave  
age.... working as .....  
in the office of Commissioner of Income Tax  
do hereby verify that the contents of paras 1 to ...  
believed to be true on legal advice and that I have  
not suppressed any material fact.

7/12/1993

Dt: 10/9/1993.

S. NO 8231/1993  
SOLEMNLY AFFIRMED  
BEFORE ME  
V. J. Desai  
D/ NOTARY  
7-12-1993



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMED BAD

OA/TA/MA/PA/C/A. No.

683/93

12A/52/93

MA/51/52/93 in OA/535/89

Union of India & Ors  
APPLICANT(S)

MR. M. R. Bhatt

COUNSEL

VERSUS

Mr. Jaydev Mallik

RESPONDENT(S)

COUNSEL

DATE	Officer Report	Orders
12 09-11-93	Condonation of Delay Copy Not served to other side. Under Obj.	Arrived DISPOSED OF ON 04-12-93 23-11-93
28/2		



बीमा नहीं NOT INSURED

अग्रवाली गवे डाक टिकटों का मूल्य रु. १० पैसे

Amount of Stamps affixed Rs. P.

एक रजिस्ट्री: 10

प्राप्त किया

Received a Registered

पांचवाले का ज्ञान

Addressed to

Catappa

पांचवाले अधिकारी के हस्ताक्षर

Signature of Receiving Officer

क्रमांक

No

123

तारीख सोहर

Date Stamp

Mallick

बीमा नहीं NOT INSURED

अग्रवाली गवे डाक टिकटों का मूल्य रु. १० पैसे

Amount of Stamps affixed Rs. P.

एक रजिस्ट्री: 10

प्राप्त किया

Received a Registered

सोहा का ज्ञान

Addressed to

Jaydee

पांचवाले अधिकारी के हस्ताक्षर

Signature of Receiving Officer

क्रमांक

No

174

तारीख सोहर

Date Stamp

Mallick



IN THE CENTRAL ADMINISTRATIVE TIRBUNAL, AHMEDABAD

Miscellaneous Application No. 683 of 1993  
(for condonation of delay)

in RA 52  
Miscellaneous Application No. \_\_\_\_\_ of 1993  
(for review)

in  
O.A. No. 535 of 1989

- 1) The Government of India  
through The Secretary,  
Ministry of Finance,  
Dept of Revenue, New Delhi.
- 2) The Chief Commissioner (Admn.)  
of Incoe-tax, Ahmedabad.
- 3) Central board of Direct Tax,  
Ministry of Finance,  
North Block, Central Secretariat  
New Delhi.

... Applicants  
(ori.respondents)

v/s

Jaydev Mallick  
Deputy Commissioner of Income Tax,  
C/o. Chief Commissioner of Income Tax,  
Ayakar Bhavan, P-7 Chowinghee Square,  
Calcutta - 700 069.

... Respondent

MOST RESPECTFULLY SHEWETH:

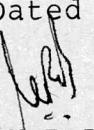
1. The applicants herein have preferred Miscellaneous application for restoration/review of the order dated 21/7/93 on the ground that the respondent herein is not exonerated of the charges levelled against him. The certified copy of the order was made available to the

2  
applicants' advocate on 3/8/93. The same was received by the office of the applicant No.2 on 16/8/1993. The same was thereafter sent to the office of respondent No.3 at New Delhi. At this point of time it was found that there was a factual error in the operative part, inasmuch as the applicant was not exonerated of the charges levelled against him. The applicants thereafter immediately contacted their advocate on 7/9/93 and 8/9/93 and requested them to prepare and file Miscellaneous application for review. Thus there is a delay of \_\_\_\_\_ days in preferring the Miscellaneous application.

2. In view of the aforeslated facts, the applicants humbly pray:

- (a) That this Hon'ble Tribunal may be pleased to condone the delay of \_\_\_\_\_ days in preferring the Miscellaneous application for review.
- (b) That this Hon'ble Tribunal may be pleased to make such further orders and give such other directions as the nature and circumstances of the case may require.

Dated this 10th day of September, 1993.

  
(M.R.Bhatt)

Advocate for the applicants.

Verification

I, G.K. Mishra, Chief Commissioner Of Income-Tax  
age. 54 working as. Chief Commissioner of Income-Tax.  
in the office of. Income-Tax. Department

do hereby verify that the contents of paras 1 to...  
believed to be true on legal advice and that  
I have not suppressed any material fact.

*D.G.M.*

Dt: 10/9/1993.

Filed by Mr. R. P. Bhatt  
Learned Advocate for Petitioners  
with second set & ..... copies  
copies copy served/not served to  
other side

Dt. 10/9/93 For Dy. Registrar C.A.T (J)  
A'bad Bench

Mr. 2

Submitted.

The Application is not served to other side.  
of how many days  
Delay has not been mentioned by the Advocate. Although  
it is also not filed. If oppose, we may issue objection  
letter to the concerned Advocate. Also copy of order dtd.  
21.09.93 is not filed in Second set.

22/09/93 L.O.C. SO/RS

RE 7/10/93

DRG/Park 7/10/93

Resubmitted.

Advocate MR. M.R. Bhatt has not removed objection till  
today, inspite of issuing Reminders. We may place this Matter  
before Hon'ble Bench for appropriate order.

22/10/93

May be placed in SO/RS  
Under obj. board on 22/10/93

DRG/Park 4-11-93

Resubmitted.

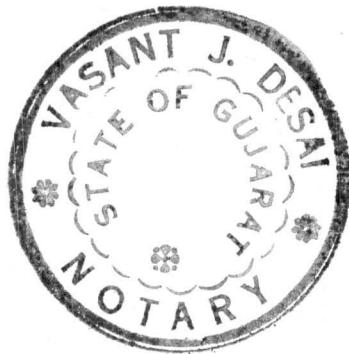
Objection has been compiled with, we may  
place before Hon'ble Bench for necessary orders

ccccc  
15/12/93

~~SOLO~~ 15/12/93

DR(J) 15/12/93

Prath



12  
13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD

Miscellaneous Application No. \_\_\_\_\_ of 1993  
(for condonation of delay)

in

Miscellaneous Application No. \_\_\_\_\_ of 1993  
(for review)

in

O.A. No. 535 of 1989

- 1) The Government of India  
through The Secretary,  
Ministry of Finance,  
Dept of Revenue, New Delhi.
- 2) The Chief Commissioner (Admn.)  
of Income-tax, Ahmedabad.
- 3) Central Board of Direct Tax,  
Ministry of finance,  
North Block, Central Secretariat,  
New Delhi.

... Applicants  
(ori.respondents)

v/s

Jaydev Mallick  
Deputy Commissioner of Income Tax,  
C/o. Chief Commissioner of Income Tax,  
Ayakar Bhavan, P-7 Chowringhee Square,  
Calcutta - 700 069.

... Respondent

MOST RESPECTFULLY SHEWETH:

1. The applicants herein have preferred Miscellaneous application for restoration/review of the order dated 21/7/93 on the ground that the respondent herein is not exonerated of the charges levelled against him. The certified copy of the order was made available to the

applicants' advocate on 3/8/93. The same was received by the office of the applicant No.2 on 16/8/1993. The same was thereafter sent to the office of respondent No.3 at New Delhi. At this point of time it was found that there was a factual error in the operative part, inasmuch as the applicant was not exonerated of the charges levelled against him. The applicants thereafter immediately contacted their advocate on 7/9/93 and 8/9/93 and requested them to prepare and file Miscellaneous application for review. Thus there is a delay of 8 days in preferring the Miscellaneous application.

2. In view of the aforesated facts, the applicants humbly pray:

(a) That this Hon'ble Tribunal may be pleased to condone the delay of 8 days in preferring the Miscellaneous application for review.

(b) That this Hon'ble Tribunal may be pleased to make such further orders and give such other directions as the nature and circumstances of the case may require.

Dated this 10th day of September, 1993.

(M.R.Bhatt)  
Advocate for the applicants.

*13/3*  
-3-



Verification

I, Smt. Kiran Dave  
age 47 working as Assistant Commissioner of Income Tax  
in the office of the Commissioner of Income Tax  
do hereby verify that the contents of paras 1 to....  
believed to be true on legal advise and that  
I have not suppressed any material fact.

7-12-1993  
Dt: 10/12/1993

Kiran

S. NO 8232/ 1993  
SOLEMNLY AFFIRMED  
BEFORE ME  
*V. J. Desai*  
D/ NOTARY  
7-12-1993

