

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
O.A. No. 201 of 1997**

**PRESENT : HON'BLE DR. A.R. BASU, ADMINISTRATIVE MEMBER.
HON'BLE DR. D.K. SAHU, JUDICIAL MEMBER.**

Jyotindra Monhan Sahay, son of
Late I.E. Sahay, working for gain
As Deputy Commissioner of Income
Tax, Calcutta, Special Range-8;
Residing at D-6, Central Govt.
Officers' Quarter, 68, Purna Das
Road, Calcutta-29.

- Versus -

1. Union of India service through
the Secretary. Deptt. of Revenue,
Ministry of Finance, North Block,
New Delhi.
2. Central Board of Direct Taxes
Service through the Chairman,
North Block, New Delhi.
3. The Chief Commissioner (Admn)
Income-Tax, Aayakar Bhawan,
P-7, Chowringhee Square, Cal-69.
4. Under Secretary to the Govt. of India,
Ministry of Finance, Deptt. of Revenue,
Central Board of Direct Taxes, North Block,
New Delhi.
5. V.I. Velayudhan, Inquiry Officer,
& Commissioner for Departmental Inquiries,
New Delhi.

For the applicant
For the respondents

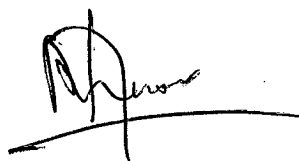
: Mr. M.S. Banerjee, counsel.
: Ms. U. Sanyal, counsel.

Order On : 19.09.2007

O R D E R

Per Dr. A.R. Basu, AM

The applicant, Shri Jyotindra Mohan Sahay, working as Deputy Commissioner of income Tax, Calcutta, has filed this O.A. challenging the charge sheet dated 8.3.90, enquiry report dated 26.9.91, note of disagreement of the Disciplinary Authority dated 31.12.91 and the punishment order dated 30.4.96.



2. At the relevant time the applicant was working as Assistant Commissioner of Income Tax (now Deputy Commissioner of Income Tax) in the year 1987 and was posted as Inspecting Assistant Commissioner (Acquisition) for the period from 23.4.1987 to 16.11.87. He was also acting as the competent authority under Section 269 (B) of Chapter XXA of Income Tax Act 1961. He was discharging his duties and functions as such, which were quasi judicial in nature, sincerely, diligently and efficiently without any complaint from any quarters. On 17.4.89 he was issued with a memorandum asking him to explain certain action taken by him during the course of his official duties and functions as IAC (Acquisition), Range-II Kolkata during the period from 23.4.87 to 16.11.87 vide Annexure-B. The applicant replied to the said memorandum and explained the position by his letter dated 27.4.89. Thereafter on 8.3.90 a charge memo was issued against the applicant under Rule 14 of the CCA (CCS) Rules, 1965. There was only one article of charge which inter alia states as follows:

"Article-I

Shri J.M. Sahay while functioning as Inspecting Assistant Commissioner of Income Tax (Acquisition), Range-II, Calcutta during the period 23.4.1987 to 16.11.87 committed grave misconduct inasmuch as he initiated acquisition proceedings in the case of a property situated at 37-A, Baker Road, Calcutta without jurisdiction and thereafter illegally held that acquisition of the property was not called for. Moreover, it was within the knowledge of Shri Sahay that the Appropriate Authority, Income Tax Department, Calcutta constituted of two Commissioners of Income Tax and one Chief Engineer had already passed an order under Chapter XX C of the Income Tax Act for pre-emptive purchase of this property and that the matter was sub-judice before the High Court. It was, therefore, not all correct on the part of Shri Sahay at that stage to give a finding that acquisition proceedings under Chapter XX A of the Income Tax Act, 1961, were not necessary and in particular to give a finding that the market value of the property was less than the apparent consideration declared in the agreement of sale. Apparently, such a finding was given in collusion with the parties only with a view to raising doubts about the correctness of the action already taken by the Appropriate Authority to acquire the said property. Shri J.M. Sahay thus failed to maintain absolute integrity and devotion to duty, and exhibited conduct unbecoming of a Government servant and thereby violated the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

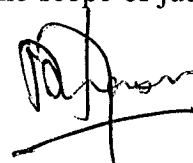
The applicant replied to the charge memo and denied the allegations leveled against him. An Enquiry Officer was appointed to conduct the enquiry in which the applicant also participated. The Enquiry Officer submitted his report on 26.9.91 holding that charge was partly proved. However, the Disciplinary Authority disagreed with the finding of the enquiry officer and held that the charge was fully established. Thereafter by a memo dated 31.12.91 the applicant was communicated the note of disagreement. At this stage the applicant move the Principal Bench of the Tribunal by filing O.A. 686 of 1992. The Tribunal by its order dated 29.4.92 directed him to file his representation as asked for from him by the authorities



and the DA was directed to dispose of the proceeding within six months from the date of receipt of representation. The applicant filed his representation on 6.7.93 pursuant to the direction of the Tribunal. However, his grievance is that although six months time was granted to the DA to finalise the matter, no communication was sent to him within six months nor any extension of time was sought for from the Tribunal. After about three years the DA by order dated 30.4.96 passed the impugned order whereby a minor penalty of reduction in the time scale of pay by one stage for a period of two years without cumulative effect was imposed on the applicant vide Annexure-I. Being aggrieved the applicant preferred an appeal on 22.5.96. Unfortunately, the appeal was not decided by the Appellate Authority and, therefore, the applicant approached this Tribunal praying for the aforesaid relief.

3. The respondents have filed a reply. It is stated that a disciplinary proceeding was initiated against the applicant by issuing the charge memo dated 8.3.90 on the allegation that the applicant acted without jurisdiction in respect of certain property as IAC (Acquisition). An enquiry was held and the Enquiry Officer came to the conclusion that the charge was partly proved. However, DA did not agree with this finding and recorded his note of disagreement holding that the charge was fully established. The applicant was communicated the note of disagreement whereafter he approached the Principal Bench of this Tribunal. The Tribunal directed the DA to conclude the proceeding within six months from the date of representation to be submitted by the applicant. It is pointed out that the matter could not be finalized within the stipulated time because of procedural delay. The representation of the applicant was examined and thereafter statutory requirement for consulting the CVC was undertaken and his advice was also examined. The matter was thereafter referred to the UPSC for their comments. The UPSC at the first instance returned the file seeking some clarifications and additional documents. In compliance thereof the matter was again sent back to the UPSC for necessary details and thereafter on receipt of the advice of the UPSC finally the DA passed the penalty order. It is contended that although a major penalty charge sheet was issued, ultimately the applicant was inflicted with minor punishment. It is contended that because of the delay in obtaining approval from CVC and UPSC there was consequential delay by passing the final order for which the respondents were not responsible.

4. It is further contended that the charge against the applicant was proved and the punishment order was issued after following the principles of natural justice and giving all opportunities to the applicant. In such circumstances, the Tribunal could not interfere in the matter as the scope of judicial review is very



limited and the Tribunal cannot also re-appreciate the evidence. So far as the appeal of the applicant is concerned, it is stated that the appellate authority will pass appropriate order.

5. The applicant has filed a rejoinder reiterating his submissions made in the O.A. and also stating that he acted bonafide and had exercised his quasi judicial power and there was no ill motive behind the acts of omission and therefore, the respondents could not have initiated any disciplinary proceeding against him.

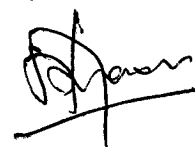
6. We have heard the Id. Counsel for the parties at length and have perused various documents produced before us.

7. Mr. M.S. Banerjee, Id. Counsel for the applicant has at the first instance pointed out that the punishment order is illegal as it was not in compliance with the direction of the Tribunal i.e. the Principal Bench. The Principal Bench categorically directed the DA to dispose of the matter within six months from the date of submission of representation by the applicant against the note of disagreement. The respondents passed the disciplinary order beyond six months time limit fixed by the Tribunal. Not only that they passed the impugned order about three years after expiry of the time limit set by the Tribunal. Therefore, the order itself is bad and on this ground alone the same is liable to be quashed.

8. He has also contended that the applicant was functioning as a quasi judicial authority in the capacity as Inspecting Assistant Commissioner (Acquisition) and, therefore, any action taken by him as a quasi judicial authority is immune from disciplinary proceeding. He has relied on the following decisions:-

1. **Union of India and Anr. Vs. R.K. Desai**, reported in 1993 (2) S.C.C. 49.
2. **Zunjarrao Bhikahi Nagarkar**, reported in 1999(2) S.C.S.L.J. 229
3. **Order of the Central Administrative Tribunal, Calcutta Bench** in O.A. 6 of 2006 (**Baljit Singh Vs. Union of India and Ors.**)
4. **Order of the Central Administrative Tribunal, Calcutta Bench** in O.A. 989 of 2003 and M.A. No. 587 of 2004 (**Baljit Singh Vs. Union of India and Ors.**)

9. Mr. Banerjee, Id. Counsel has argued that only on the basis of some vague or indefinite information no disciplinary proceeding can be initiated against an officer exercising quasi judicial power. There must exist reasonable basis for initiating such proceeding. He has also submitted that suspicion has no role to play in such matters. If on the basis of mere suspicion or for every error of law or judgment a

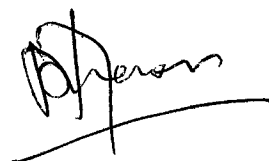


quasi judicial authority is proceeded against, then no such authority would be bold enough to take a firm decision fearing future disciplinary proceeding.

10. Ms. U. Sanyal, Ld. counsel for the respondents has, however, submitted that the delay in issuing the punishment order is not intentional. Since the applicant is a senior Gr.'A' officer, certain formalities have to be complied with before issuing the punishment order. Therefore, the case of the applicant was referred to the CVC and after obtaining their views the matter was referred to the UPSC. The UPSC returned back the matter seeking some clarification and additional documents. It is only when the UPSC was finally satisfied and sent their advice, the DA would take a final decision. In the process there was some delay which was not intentional and for such delay the proceeding cannot be vitiated.

11. She has also contended that it is incorrect to say that an officer exercising quasi judicial power can never be proceeded against. The Hon'ble Supreme Court in the case of **Union of India Vs. A.N. Saxena, JT 1992 (2) SC 532** has categorically stated that when an officer who exercises judicial or quasi judicial power acts negligently or recklessly or in order to confer undue favour on a person or party is not acting as a judge. Therefore, in such circumstances the Govt. is not precluded from taking disciplinary action for violation of conduct rules. The Apex Court has also laid down the circumstances under which such proceedings can be initiated. Mrs. Sanyal, Ld. Counsel further submits that the proceeding against the applicant was initiated after the DA was satisfied about the motive of the applicant. She points out that the Tribunal in its power under judicial review can only examine whether the principle of natural justice has been followed or the delinquent has been given adequate opportunity to defend himself. The Tribunal is not in a position to re-appreciate the evidence on record nor it can substitute its opinion in place of that of DA. She has, therefore, submitted that the application has no merit and hence it should be dismissed.

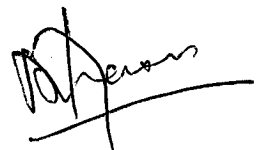
12. We have given our thoughtful consideration to the rival contentions. From the imputation of misconduct annexed to the charge memo it appears that the main allegation against the applicant is that he violated the guidelines issued by the CBDT dated 6.1.86. It appears that there was a sale agreement dated 17.9.86 for transfer of property at 37-A, Baker Road, Calcutta between one Shri Shital Chander Biswas (Seller) and M/s Ellen Barrie Construction Ltd. (purchaser). That was only an agreement and there was no actual transfer of property. Accordingly the parties were not required to file statement in form 37 EE in terms of Section 269 AB of Chapter XX A of Income Tax Act. They, however, filed appropriate statement in form 37 -I as required under Section 269 UC of Chapter XX C. In pursuance of the above



statement filed by the parties in form 37-I , the appropriate authority initiated proceeding for preemptive purchase of the property and acquired the property by order dated 12.12.1986 because the property was found to be sold under the aforesaid agreement at a much lower price than the fair market values.

13. The applicant who at the relevant time was working as IAC (Acquisition) also had concurrent jurisdiction in the matter which is not disputed. But knowing the above facts the applicant asked by a notice dated 8.5.87 the purchaser to file statement in form 37 EE and also threatened them that failing to comply with the notice they will be liable for prosecution under IT Act. Therefore, the said purchaser complied with the direction of the applicant. The matter was thereafter referred by the applicant to the Valuation Officer to determine the fair market value of the property. In response Superintendent Engineer (Valuation) informed the applicant by his letter dated 15.7.87 that the matter was already dealt with on a reference from the appropriate authority and the said appropriate authority had ordered preemptive purchase of the property which was under challenge before the Hon'ble High Court. Thus the applicant was fully aware that a proceeding in respect of the same property was already undertaken by the appropriate authority and his decision was under challenge before the Hon'ble High Court. Even then the applicant proceeded with the matter and recorded a finding on 11.9.87 stating inter-alia that the value of the land was lower i.e. Rs.1,74,455/- per cotah instead of Rs.2,35,231/- as valued by the valuer. He had also recorded that this was not a fit case for initiation of acquisition proceeding. Not only that the applicant also intimated the parties. Taking the advantage of this order of the applicant the party moved the Hon'ble High Court in December 1987 challenging the earlier order of the appropriate authority dated 12.12.1987 for preemptive purchase of the property and thus by passing an order of non-acquisition in spite of knowing the full facts the applicant has allowed the party to get a favourable order from the Hon'ble High Court on the ground that there was wrong decision on the part of the appropriate authority. In this way the applicant helped the purchaser of the property and diluted the case of the department before the Hon'ble High Court. This action of the applicant was motivated and violative of the provisions of the conduct rules and on this ground the proceeding was initiated against the applicant.

14. The applicant has, however, refuted the allegations and has pointed out that as he had concurrent jurisdiction over the matter, he had to conclude the proceeding by passing an appropriate order as otherwise he would be held responsible for dereliction of duty. He has also pointed out that for an adjacent land valued at a lesser price he had dropped acquisition proceeding and, therefore, he could not



have started a proceeding in respect of the property in question. In fact, the applicant has taken legal points in support of his action.

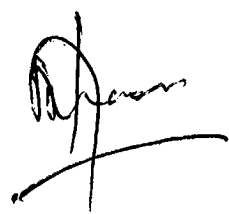
15. In a disciplinary proceeding, as rightly pointed out by Ms. Sanyal, the scope of judicial review is very limited. The Tribunal cannot re-appreciate or re-assess the evidence on record nor it can interfere unless there is violation of principles of natural justice or there is infraction of any statutory provisions or if it is a case of no evidence.

16. So far as the contention of the Id. Counsel for the applicant that an officer exercising quasi judicial authority is immune from its own action, we find that the matter was already settled by the Hon'ble Supreme Court in various decisions. It has been inter-alia held in the case of **Union of India Vs. K.K. Dhawn**, Jt 1993(1) SC 236 following earlier decisions in **Union of India Vs. A.N. Saxena (Supra)** that disciplinary enquiry can be held even with respect to conduct of an officer in discharging of his judicial or quasi judicial duty. Apex Court has also laid down the circumstances under which such action can be taken. It will be profitable to quote the relevant portion as below:-

“ Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act but we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty.
- (iii) if he has acted in manner which is unbecoming of a Government servant.
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago 'though the bribe may be small yet the fault is great.'”

Similar decision was also taken by the Apex Court in the case of **Zunjarrao Bhikahi Nagarkar Vs. Union of India and Ors.**, 1999 (2) SCSLJ 229.



17. In view of the above legal position it is quite clear that the disciplinary proceedings can be taken against an officer exercising quasi judicial power in the circumstances referred to above. But each case has to be dealt with on the facts of that particular case and there cannot be any straight jacket formula in this regard.

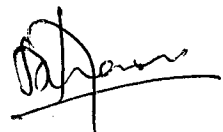
18. The sole allegation against the applicant is that he knowing fully well that a pre-emptive sale was ordered by the competent authority exercising concurrent jurisdiction and such decision of the competent authority or appropriate authority was under challenge before the Hon'ble High Court, the applicant proceeded with the matter and held that no acquisition proceeding was called for and that the market value of the property was much less. This had helped the purchaser to have favourable decision from the Hon'ble High Court. In this context our attention has been drawn to the CBDT's order dated 6.1.86 which clarifies as to what should be the procedure to be followed where both the competent authority appointed under Chapter XX A and appropriate authority constituted under Chapter XX C have jurisdiction on account of the operation of Rule 48t(2)(a). It has been inter-alia stated as follows:-

“ A question has arisen that in cases where both the competent authority appointed under Chapter-XX A Appropriate Authority constituted under Chapter XX C have jurisdiction on account of the operation of Rule 48t(2)(a) which of the two or both should exercise jurisdiction after 1st October, 1986. The matter has been decided in consultation with the Ministry of Law and it is clarified that :-

- (i) Chapter-XXC does not effect the provisions of Chapter XXA.
- (ii) In cases where both Forms 37 EE & 37 I have been filed non-purchase of properties by the Appropriate Authority will not preclude the Competent Authority under Chapter XX A from requisite acquiring the property if other conditions of Chapter XX A are satisfied.
- (iii) In cases where properties are purchased under Chapter XX C, it would be advisable to keep the proceedings under Chapter XX A pending if parties raise any legal disputes against purchase till such time the disputes are finally settled.”

From the above it is seen that in cases where properties are purchased under Chapter XX C it would be advisable to keep the proceedings under Chapter XX A pending if the parties raise any legal dispute against purchase till such time the disputes are finally settled.

19. The allegation against the applicant is that he knowing fully well that the matter was sub-judice before the Hon'ble High Court, proceeded with the matter ignoring the aforesaid direction of the CBDT and the action of the applicant helped the purchaser to get a favourable verdict from the Hon'ble High Court and thereby diluting the stand of the Department before the Hon'ble Court. We find justification



in the stand taken by the respondents in the matter in the facts and circumstances stated above. Although the applicant has tried to argue that there was no acquisition proceedings started and, therefore, the aforesaid circular was not applicable, we are unable to accept this contention.

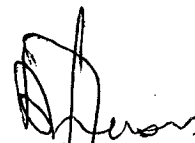
20. The Apex Court, as quoted above, has already laid down the criteria where a disciplinary action may be initiated against an officer exercising quasi judicial power. If such an officer acts in order to unduly favour or help a party or if he acts prima facie with corrupt motive then such action can be taken. In the instant case the motive of the applicant has been established and, therefore, we find that the disciplinary proceeding started against the applicant in the circumstances narrated above cannot be faulted. The applicant has not alleged any other procedural lacuna or denial of the principles of natural justice. He has simply alleged malafide against the respondents in initiating the above disciplinary proceedings. Mere allegation of malafide does not prove the same. Therefore, no notice can be given against such bald allegation leveled by the applicant against the authorities. It is true that the Enquiring Officer held that the charge was partly proved, but the DA has every right to differ with the finding of the enquiring authority. The only duty casts on the DA is to communicate the note of disagreement to the delinquent and to seek his representation. That having been done and after following all the procedures and after giving all opportunities to the applicant the impugned punishment order was passed. We, therefore, find no irregularity or illegality in the matter of issuance of the punishment.

21. The punishment in this case is a minor punishment whereas the applicant was issued a major penalty charge sheet. Therefore, it is quite obvious that the respondents were not vindictive nor there was no malafide intention on their part as alleged by the applicant, rather they have taken a lenient view against the applicant.

22. For the reasons stated above we find no merit in the said O.A. which is accordingly dismissed. There will be no order as to costs.



Member (J)



Member (A)