IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 47/99.

Dated: 8.10.1999.

Vijay Kumar Puri — Applicant.

Mr. Bomi Zaiwala with Mr.V.G.Rege — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Mr.M.I.Sethna with Mr.V.D.Vadhavkar. — Advocate for Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? NO.

(3) Library? - Yes

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGIONAL APPLICATION NO.47/99.

Friday, this the 8th day of October, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

Vijay Kumar Puri,
Siddharth Nagar,
Flat No.2,
Building No.6 D-2, Aundh,
Pune - 411 017. ...Applicant.
(By Advocate Mr.Bomi Zaiwala with
Mr.V.G.Rege)

Vs.

1. Union of India through
Secretary to Government,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001.
2. Central Board of Excise and
Customs,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001. ...Respondents.
(By Advocate Mr.M.I.Sethna with
Mr.V.D.Vadhavkar).

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the charge sheet dt. 2.12.1988. The respondents have filed their reply opposing the application. Since the point involved is a short legal point, we are disposing of this application at the admission stage after hearing Mr.Zaiwala along with Mr.V.G.Rege, the learned counsel for the applicant and Mr.M.I.Sethna, along with Mr.V.D.Vadhavkar, counsel for the repondents.

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2. Few facts which are necessary for the disposal of the application are as follows.

The applicant was working as an Additional Commissioner of Central Excise at the relevant time. He was appointed as an Enquiry Officer to conduct disciplinary enquiry against 15 officials in respect of certain mis-conduct in a disciplinary case. After conducting the enquiry, he submitted a report dt. 26.4.1996 holding that the charges against the 15 officers are not proved. After receipt of the enquiry report, it appears the disciplinary authority accepted the same and dropped the charges against those officials. Then later, the administration has decided to issue a charge sheet against the applicant about his quasi-judicial order viz. the Enquiry Report in the said case on the ground that his findings and reasoning are not correct. The applicant after receiving the charge sheet has approached this Tribunal challenging the same on number of grounds. The main ground is that quasi judicial authority cannot be proceeded with in a departmental enquiry in respect of quasi-judicial order on the ground that the order is incorrect or contrary to rules or contrary to facts. The applicant, therefore, wants that the impugned charge sheet dt. 2.12.1998 to be quashed.

3. The respondents in their reply have stated the circumstances under which the charge sheet came to be issued against the applicant and have justified the issuance of the charge sheet agains the applicant.

4. The learned counsel for the applicant contended that a quasi-judicial authority cannot be proceeded with in such a manner in respect of his findings in the enquiry on the ground that his reasoning is not correct or is contrary to rules or law.

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On the other hand, the learned counsel for the respondents submitted that the scope of interference by the Tribunal is very limited in a disciplinary enquiry case at the threshold viz. at the stage of issuance of charge sheet. He further argued that issuance of charge sheet is perfectly justified and merits no interference and that too at this stage.

5. After hearing both the sides and giving our anxious consideration to the materials on record, we find that this is not a fit case in which the department could have issued a charge sheet against the applicant. We presently point out that even if we accept hundred percent of entire allegations in the statement of imputation and Articles of Charges, it does not make out mis-conduct. We are conscious of our limitations and scope of judicial review in a matter like this. There is no doubt that the Tribunal should not interfere at the threshold at the stage of issuance of charge sheet, but if it is a case of no evidence or if it is a case of no "mis-conduct" at all then the duty of the Tribunal is to interfere at this stage so that the officer should not be allowed to face such an enquiry, which also results in waste of public time and money.

6. We have already seen that the applicant had worked as an Enquiry Officer and after holding enquiry he submitted a report exhonerating all the delinquent officials in that case. The Articles of Charge at page 14 of the paper bookd which reads as follows:

> "Shri V.K.Puri, the then Addl, Commissioner of Customs and Central Excise, Mumbai and subsequently posted as SDR, CEGAT, Mumbai, who was appointed as Inquiry Officer to inquire into the charges against Shri O.P.Mendiretta, Asstt. Commissioner and 14 other officers held that the charges against all the 15 officers are not proved without going on the preponderance of probability but searching for foolproof evidence and thus failed to maintain devotion to duty and

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acted in a manner of unbecoming of a Government servant and thereby contravened Rule 3(1) (ii) & (iii) of CCS (Conduct) Rules."

Therefore,we find from the charge that the allegation ~~the~~ against applicant is his reasoning of exhonerating the applicants on the preponderance of probability and searching of foolproof evidence amounts to lack of devotion to duty and he has acted in a manner of unbecoming of a government servant.

Now, let us see what are the reasons given in support of the said charge which could be seen from the statement of imputation which ~~are~~ is at pages 15 and 16 of the paper book. After narrating the facts, it is stated in para 4 that the observations of the the applicant in the report that the delinquent officials had made this statement under duress "is not correct". At the end of para 4 it is stated that the opinion of the applicant on this point is incorrect. In para 4.1 it is stated that the applicant should have considered the material points and he should not have given credence to the retraction of the confessional statements. These are all the allegations against the applicant. The sum and substance of the reasons are that the applicants reasoning in exhonerating the delinquent officials was incorrect and he has not given proper reasons or the reasons given by him are not according to rules. Therefore, even if we accept the entire allegations in the Articles of Charge or under Statement of Imputation, it does not show any mis-conduct at all.

A Quasi Judicial Officer or a Judicial Officer can pass any order and it may be right or wrong which can be corrected by the Appellate forum; if merely because a wrong order or erroneous order is passed by a Judicial Officer or a Quasi Judicial officer, a quasi judicial ~~order~~ officer can be subjected to disciplinary

enquiry, then no officer can act independently and fearlessly. Hundreds and hundreds of cases come before us where orders have been reversed by the higher authorities. If an order is reversed by the higher authority can the lower authority be punished and proceeded with on the grounds of mis-conduct and then there will be no end at all. If there is something to show that the applicant had acted in that manner due to extraneous reasons or to show undue favour to the delinquent officials, then probably the charge of mis-conduct can be sustainable. Mere allegation that the reasoning "is not correct" cannot be a ground for proceeding against an official for mis-conduct in respect of a quasi judicial order. We have to make a distinction between judicial orders and quasi judicial orders on the one side annd usual administrative orders on the other. We will presently refer to few of the Supreme Court decisions on this point.

7. The learned counsel for the respondents placed strong reliance on the Judgment of the Supreme Court in K.K.Dhawan's case reported in (1993 SCC (L&S) 325). That was a case where charge sheet had been issued against an Income Tax Officer for passing a quasi-judicial order in an undue haste and apparently with a view to confer undue favour upon the assessee concerned. Therefore, that was a case where there was a specific allegation against the official that he passed such an order for showing undue favour to the assessee which necessarily implies due to extraneous consideration. The Supreme Court held that in such a case, the Court cannot interfere at the stage of issuance of charge sheet.

The learned counsel for the applicant has placed before us the latest Judgment of the Supreme Court in Zunjarrao Bhikaji

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Nagarkar Vs. Union of India & Ors. (JT 1999 (5) SC 366). That was also a case where a charge sheet had been issued against a Customs Officer in respect of a quasi-judicial order. The charge against the officer was that while passing a quasi-judicial order in a Central Excise matter he had favoured a particular party by not imposing any penalty even though he had recorded a finding that he had evaded the excise duty wilfully.

The Supreme Court recorded a finding that it was mandatory on the part of the officer to levy penalty in such a case, but the officer had taken the view that penalty is not mandatory but it is only discretionary. Though the Supreme Court came to the conclusion that it was mandatory on the part of the officer to have passed the order of penalty, the question whether on that ground officer can be proceeded by issuing departmental charge sheet. The Supreme Court noticed number of decisions on the point and observed in para 36 of the reported judgment that merely because the officer has not imposed the penalty though it was obligatory on his part, can it be said that it amounts to mis-conduct and he is liable to be proceeded with in a disciplinary enquiry. There was no material before the Disciplinary Authority as could be seen from the charges and the statement of imputation that the officer had acted to show favour to the concerned party except a bear allegation. The Supreme Court pointed out that mere suspicion is not sufficient to issue a charge sheet unless there is some prima facie material to show that the officer intended to show undue favour to a particular party. The Supreme Court also noticed that the officer had given reasons in his order as to why he did not think it fit to impose penalty. The Supreme Court noticed that no witnesses were cited

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in the charge sheet and there was no material to show that the order was passed by him to show undue favour to the party. Merely because the order of the officer is erroneous,it is a case of error of judgment and therefore the officer cannot be proceeded with in a departmental enquiry as observed by the Supreme Court. The Supreme Court has further pointed out that even if it is stated that it is a case of negligence, it may be a case of mere negligence or carelessness,but it should be culpable negligence in order to proceed departmentally. An error of judgment or error in giving reasons cannot be a ground for proceeding with a departmental enquiry. In para 40 the Supreme Court has noticed that though imposition of penalty was mandatory, there was nothing wrong or improper on the part of the officer to form an opinion that imposition of penalty was not mandatory.

Similarly, in the present case the allegation against the applicant is he has accepted the retracted statements of the delinquent officials and ignored their confessional statements. This is purely a question of one's opinion or reasoning whether the retracted statement should be acted upon or the earlier confession statement should be acted upon inspite of retraction. Even granting for a moment that the reasoning was not proper or erroneous as held in the above case where the Supreme Court held that imposition of penalty was mandatory and the opinion of the officer was not correct, still it is not a case of mis-conduct so as to call for departmental action. Another thing pointed out in the present case is that the applicant has discussed the evidence

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and expected strict proof instead of applying the rule of pre-ponderance of probability. The answer to this submission is the observation of the Supreme Court that a wrong interpretation of law cannot be a ground for mis-conduct. Then, of course, the Supreme Court has added the words that it is a different matter altogether if it is deliberately actuated by mala fides.

8. In that case there was some allegation that officer had shown some undue favour to the party. Though there was such an allegation, the Supreme Court pointed out that as per the charge sheet and statement of imputation and the documents relied on there was no material to substantiate that allegation. But, in the present case there is not even a single allegation that the applicant has shown undue favour to the delinquent officials while preparing such an enquiry report or he has acted on extraneous considerations or with ulterior motives;in the absence of any such allegation, much less materials, merely on the ground that his reasoning is not correct or erroneous cannot be a ground for issuing a charge sheet against him, in view of the law declared by the Supreme Court.

9. Then, in para 43 the Supreme Court has observed as follows:

> "If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it proceeds on a wholly illegal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law which is in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal, void and non est. The present

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charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication, where under quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

The above observations of the Supreme Court clearly show that in respect of quasi judicial matters one has to be careful in issuing a charge sheet. Merely because another opinion is possible or reasoning is not correct, cannot be a ground for issuing a charge sheet. As observed by the Supreme Court the entire system under which quasi judicial powers are exercised would fall into dis-repute if the officers are hauled up on allegation that their order is incorrect or erroneous.

10. In the present case, we also find one more development. As rightly argued on behalf of the applicant, if the enquiry report of the applicant was erroneous or was contrary to the facts on record, the Disciplinary Authority was not bound by the report of the Enquiry Officer, he has every right to take a different view. He could have ignored the enquiry report and he could have recorded the finding that the officials are guilty and could have punished them. On the other hand, the Disciplinary Authority has accepted the Enquiry Report and dropped the charge sheet. When the higher officer has accepted the report of the Enquiry Officer the charge of mis-conduct against the officials cannot be sustained. There are many cases which we have come across in cases where the Disciplinary Authority has disagreed with the Enquiry Officer's report and taken a different view and held delinquent officer guilty but in the present case the Disciplinary Authority has agreed with the

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Enquiry Officer's report and dropped the charges.

11. We may also point out that even in the reply filed by the respondents, there is no allegation of any extraneous consideration or ulterior motives on the part of the applicant in making the enquiry report. We will just refer to few of the sentences in the reply which are as follows :

> "...he should have considered the totality of facts and the circumstantial evidence of the case instead of searching for fool-proof evidence for coming to his conclusion....I further say that in the present case the applicant did not perform his duty.... The principle of preponderance of probability is followed in these proceedings.... Applicant did not proceed with the enquiry on the basis of the principle of preponderance of probability....I say that the applicant has been charge sheeted for not following the principles of preponderance of probability on the basis of which disciplinary proceedings were conducted...".

Therefore, even in the reply there is no allegation of any mala fides or ulteriour motive or extraneous consideration on the part of the applicant in preparing the enquiry report. The only reason given in the reply is that the applicant prepared the enquiry report without applying principles of preponderance of probability and without discussing the evidence properly and accepting the retracted statements without giving weight to the earlier confessions. In our view, these reasons even if taken at its face value will not make out a case of mis-conduct.

12. The learned counsel for the respondents also invited our attention to the case of Union of India & Ors. vs. A.N.Saxena (1992 (3) SCC 124), where the Supreme Court has pointed out that the Tribunal should not have stayed the departmental enquiry. We have perused the facts in that case, particularly in para 6 where the Supreme Court has pointed out that there were extremely

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serious allegations made against the officer which, if proved, could have established mis-conduct and mis-behaviour and hence in such a case at interim stage the Tribunal, without recording any reason, should not have granted ex-parte stay order. Therefore, that was a case where there were serious allegations of mis-conduct and mis-behaviour had been alleged against the officer.

But, in the present case, there is no allegation of mis-conduct at all except stating that the applicant's reasoning was not correct and therefore he ~~should~~ cannot be hauled up for departmental action. Even if we accept the entire allegation, it would not make a case of mis-conduct and therefore, it is a case where the Tribunal should exercise its jurisdiction to interfere and quash the charge sheet.

In view of the peculiar facts of this case and the latest decision of the above mentioned case, we find that this is not a fit case in which the charge sheet should be allowed to continue.

13. In the result, the application is allowed. The impugned charge sheet dt. 2.12.1998 is hereby quashed and the respondents are directed not to proceed with any enquiry based on this charge sheet. No order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

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