IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 24th day of November, 2006

1. **ORIGINAL APPLICATION No. 238/2006**

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Durgesh Shankar,
s/o late Shri L.S.Mathur,
presently posted as Commissioner of Income Tax,
Jaipur-1
r/o Income Tax Officers Colony,
Malviya Nagar, Jaipur.

..Applicant

(By Advocate : Mr. Mahendra Singh)

Versus

1. Union of India through
Secretary (Revenue)
M/o Finance,
Department of Revenue,
Government of India,
North Block, Central Secretariat,
New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, Central Secretariat,
New Delhi.

3. Central Cottage Industries Corporation
of India Ltd.
'A' Barracks, Janpath,
New Delhi through Managing Director.

4. The Chief Commissioner of Income Tax, Jaipur
New Central Revenue Building,
Statue Circle,
Jaipur.

.. Respondents

(By advocate: Mr. Gaurav Jain for resp. No. 1,2 and 4.
Mr. Amit Mathur, proxy counsel to
Mr. Amit Kumar for resp. No.3)

2. CONTEMPT PETITION No.35/2006 (OA No.238/2006)

Durgesh Shankar
s/o Late Shri L.S.Mathur,
presently posted as Commissioner of Income Tax,
Jaipur-I, Jaipur,
Rajasthan.

(By Advocate: Mr. Mahendra Singh)

.. Petitioner

Versus

1. Ms. M.J.Kherawala,
Chairman,
Central Board of Direct Taxes,
New Delhi.

2. Ms. Baljeet Matiani,
Member (Personnel),
Central Board of Direct Taxes,
New Delhi.

.. Respondents

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby, inter-alia, praying that charge memo dated 25.4.2004 (Ann.A1) may kindly be quashed.

2. Briefly stated, facts of the case, so far relevant for disposal of this OA, are that the

applicant joined in Indian Revenue Service (Income Tax) in the month of November, 1973. It is further stated that he was placed in Senior Scale in November, 1977 and in Selection Scale as Commissioner of Income Tax in September, 1987. It is case of the applicant that, but for the impugned chargesheet, his career is spot less and unblemished. It is further stated that in 1981 the applicant received commendation from the Central Government for displaying commendable devotion to his duties in the face of adverse circumstances during the Income Tax Search and seizure operation in Kashmir in May, 1981. The applicant has further stated that vide letter dated 23.6.2000 (Ann.A2) he was appointed as Managing Director in the Central Cottage Industries Corporation of India Ltd. (for short, CCIC) for a tenure of 5 years from the date of assumption of charge or till the date of his superannuation, whichever event occurs earlier. It is further stated that Additional Development Commissioner (Handicrafts), Ministry of Textiles, Office of the Development Commissioner (Handicrafts) conveyed the sanction of the President to appointment of the applicant as Managing Director of CCIC on deputation basis w.e.f. 3.7.2000 on the terms and conditions as set out in the said letter including the matter relating to conduct of disciplinary action. The applicant has placed copy of the said letter as Ann.A3. The grievance of the applicant in this case is

regarding issuance of impugned charge sheet vide memo dated 25.4.2006 (Ann.A1). The applicant has made challenge of this charge sheet on merit as well as on the ground that the said charge sheet has been issued under the dictates of the Central Vigilance Commision (for short, the CVC) and the disciplinary authority has not applied his mind. For that purpose, reliance has been placed on the copies of letters of the CVC dated 12.1.2004 and 17.3.2006, which were enclosed with the memorandum of charge sheet. Further challenge made by the applicant is that the said charge sheet could not have been issued under Rule 14 of the Central Civil Service (Classification Control and Appeal) Rules, 1965 (for short, CCS (CCA) Rules) as according to the applicant at the relevant time he was governed by the All India Service (Conduct, Discipline and Appeal) Rules. For that purpose the applicant has drawn our attention to condition No. xvi) which form part of terms and conditions of appointment of the applicant in the CCIC (Ann.A3). The applicant has also challenged the charge sheet on merit, but since we are not going into the merits of the charges levelled against the applicant, we are not noticing such contentions.

3. When the matter was listed for the first time on 5.7.2006, this Tribunal issued a short notice to the respondents to make submissions on the interim prayer

of the applicant as this Tribunal was not inclined to grant mandatory relief thereby staying operation of the charge sheet and the matter was ordered to be listed on 17.7.2006. At this stage, it will be useful to quota relevant portion of the order, which thus reads:-

> "Learned counsel for the applicant has drawn my attention to the Central Vigilance Commission letter dated 12.01.2004, page 46, which form part of the impugned charge sheet and argued that the Disciplinary Authority has not applied his mind while issuing the charge sheet and the same has been issued at the instance of Central Vigilance Commission. Not only this, the Commission has also nominated Shri R.S.Dash-CDI, CVC as IO for conducting departmental inquiry against the applicant much prior to the issuance of the charge sheet. Learned counsel for the applicant has also questioned the competency of the respondents to issue charge sheet under the CCS (CCA) Rules, 1965, as according to him the applicant at the relevant time was governed by the All Indian Service (Disciplinary and Conduct) Rules.
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> Prima facie, I am of the view that the applicant has made out a case for grant of interim relief. It is judicially well settled that the decision to initiate the departmental inquiry has to be taken by the Disciplinary Authority and not under the dictate of any other ourside agencies/authorities. Before passing interim order, let the respondents file reply to the interim prayer of the applicant within a period of ten days. In case the reply is not filed before the next date, the Tribunal shall consider to pass interim order on the next date of hearing.
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> Registry is directed to annex copy of the order alongwith the notice(s)."

On 17.7.2006 appearance was made on behalf of the respondents. The respondents made an unusual prayer of eight weeks' time to file reply. Looking into the facts that the impugned memorandum dated 25th April, 2006 shows complete non-application of mind and it has been issued at the instance of the Central Vigilance Commission and also taking into consideration the apprehension of the applicant that the said charge

sheet has been issued at the time when promotion to the post of Chief Commissioner of Income Tax is under process, this Tribunal taking into consideration all the facts regarding timing of issuance of charge sheet, though the matter pertains to the year 2001-2002 and even in 2004 the Central Vigilance Commissioner has advised to issue charge sheet against the applicant, but no such action was taken by the respondents, this Tribunal in order to protect the interest of the applicant passed the following orders:-

> "Learned counsel for Respondents No.1,2 & 4 prays for 8 weeks time for preparing the reply as the Vigilance Department has to be consulted. Vide order dated 5.7.2006, this Tribunal has come to the conclusion that the applicant has made out a case for the grant of interim relief and it was further observed that it is judicially well settled that the decision to initiate the departmental inquiry has to be taken by the Disciplinary Authority and not under the dictate of any other outside agencies/authorities. However, ex-parte interim stay was not granted on that date as this Tribunal wanted to hear the respondents to interim prayer. Accordingly, the matter was adjourned to today. In view of the fact that the respondents are praying for unusual long time to file reply to the interim prayer and the learned counsel for the applicant submits that the selection for the post of Chief Commissioner of Income Tax is under process, I am of the view that this is a case where interim relief should be granted to the applicant at least till the next date. Accordingly, operation of the impugned charge sheet dated 25.4.2006 is stayed till the next date of hearing. List on 10.10.2006. In the meanwhile, respondents may file reply. CC be made available to the parties."

4. At this stage, it may be relevant to mention hear that despite the order passed by this Tribunal, the respondents have proceeded to hold the DPC for the post of Chief Commissioner of Income Tax thereby resorting to sealed cover procedure, which action according to us is wholly unjustified and not

supported by law as the Apex Court in the case of Rama Narag v. Ramesh Narang and Ors. JT 1995 (1) S.C. 515 has held that where the order is capable of execution, operation of the order can be stayed. The Apex Court in this case was considering the scope of Section 389 (1) of Cr. P.C. According to this Section, what can be suspended under this provision was execution of the sentence or execution of the order. As per literal interpretation of Section 389 (1), the order of conviction can not be suspended or stayed. The Apex Court while considering the scope of Section 389 (1) of Cr. P.C. held that where the order is capable of execution, even the order of conviction can be stayed and while granting of a stay of suspension of the order of conviction, the court must examine the pros and cons. Under these circumstances, the Apex Court further held that Section 267 of the Companies Act debar a person convicted by Court of an offence involving moral turpitude to be appointed or to continue to be appointed as Managing Director. Under such circumstances, the Apex Court held that it was permissible even to grant stay regarding conviction under such circumstances.

In the instant case also the charge sheet, operation of which was stayed by this Tribunal was capable of execution, inasmuch as, the consequence of

not granting stay would amount to debarring the person from further promotion.

5. Further, as can be seen from the interim stay as reproduced in earlier part of the judgment, the stay granted was not in the terms that the respondents should not proceed with the inquiry but this Tribunal has issued mandatory direction thereby staying operation of the impugned charge sheet; one of the consequences which may flow from such direction was that in case the charge sheet is not stayed, the person shall be deprived of his promotion in case he is found fit by the DPC which has been done in the instant case. As such, in view of the law laid down by the Apex Court in the case of Rama Narang case (supra) it was not open for the respondents to resort to sealed cover procedure. Be that as it may, this fact coupled with observations made by the Central Vigilance Commission vide letter dated 12th January, 2004 and more particularly vide letter dated 17.3.2006 which formed part of the charge sheet, it is evident that there was someone in the CBDT to ensure that applicant be not promoted to the higher post and be not dealt with in accordance with law and thereby even flouting the orders passed by this Tribunal which has judicial sanctity and has to be obeyed at all cost in order to maintain rule of law till such order is not set-aside by the higher court, besides acting contrary

to the ratio as laid down by the Apex Court from time to time. At this stage, we may also notice that though the applicant has filed a Contempt Petition which was registered as Contempt Petition No.35/2006 we are not inclined to go further in the matter, though it was a fit case where notices could be issued to the respondents as we feel that someone in the Government would like to look into the matter why various functionaries have not acted in accordance with rules and exceeded their authority by directing the Department to ensure that charge sheet is served on the applicant within a month positively, case be referred to Inquiry Officer thereafter by appointing Inquiry Officer and further the Department was asked to report back about the matter (letter Ann.A2 dated 17.3.2006 advice rendered by the CVC) and also about the action of the officer(s) in the CBDT who has not even cared to ensure compliance of the order that this Tribunal has granted mandatory relief thereby staying operation of the charge sheet, as such, it was not permissible for them to resort to the sealed cover procedure if one has regard to the ratio as laid down by the Apex Court in the case of Rama Narang (supra). Thus, we are leaving the matter at this stage only noticing our dismay how various functionaries are not adhering to the rule of law and acting in a manner which is not warranted under law at all.

6. At the sake of repetition, we may notice that since we are not going into merit of the case and the learned counsel for the applicant has confined his arguments only to the aforesaid two contentions viz. i) non-application of mind by the disciplinary authority and (ii) charge sheet could not have been issued under CCS (CCA) Rules, as such, it is not necessary to mention other facts and grounds taken by the applicant.

7. In the reply the respondents Nos. 1, 2 and 4 have taken routine objection that i) the applicant has no grievance at this stage as the disciplinary proceedings under challenge have not been finalized nor penalty has been imposed; ii) that the charge sheet was issued as per procedure which also involves consultation with independent advisory bodies such as CVC and the UPSC, so as to ensure a fair, objective and dispassionate assessment; (c) that the submission of the applicant sent in response to the memorandum of charge were under consideration by the Disciplinary Authority when the applicant with the intent to securing scuttling the proceedings against him has filed this OA. For that purpose, the respondents have placed reliance on the case rendered by the Mumbai High Court in the case on Union of India vs. Benoy Gupta, whereby it has been held that Tribunal was not justified in quashing the memorandum of charge issued

to the applicant without waiting for the outcome of the findings of the disciplinary authority in the disciplinary proceedings initiated against the officer. Respondent No.3 has also filed formal reply.

8. We have heard the learned counsel for the parties and gone through the material placed on record.

9. As we propose to dispose of this application on the ground whether decision to initiate disciplinary proceedings was taken by the Disciplinary Authority after application of mind and whether it was not taken under the dictates of the CVC, as such, we are not going to deal with the second contention raised by the applicant regarding competency of the Disciplinary Authority to issue charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 and not under the All India Service (Conduct, Discipline and Appeal) Rules, which were applicable to the applicant at the relevant time. Before dealing with the factual aspect of the matter, it will be useful to notice the law laid down by the Apex Court in that regard.

10. In the case of Anirudhsinhji Karansinhji Jajeja and anr. Vs. State of Gujarat, (1995) 5 SCC 302, which is a decision of three Judges Bench of the Apex Court, the Apex Court has held that failure to exercise jurisdiction vested under law on a person or authority

and exercise of jurisdiction under directions or in compliance with some higher authority's instructions, then it will be a case of failure to exercise discretion all together. Therefore, the entire proceedings are vitiated and liable to be quashed. That was a case under Terrorists and Disruptive Activities (Prevention) Act, 1987 (for short, the TADA). Under Section 20-A of the Act First Information Report about commission of offence could not have been recorded by the police officer without prior approval of the District Superintendent of Police. In other words, the condition precedent for recording of information about commission of an offence under TADA is the approval of the District Superintendent of Police and cognizance of any offence under the TADA cannot be taken without prior sanction of the Inspector General of Police or as the case may be, the Commissioner of Police. The District Superintendent of Police has not exercised its jurisdiction under Section 20-A (1) i.e. grant approval of recording of information about commission of offence under TADA. On the contrary, he abdicated his jurisdiction and referred the matter to the Additional Chief Secretary, Home Department requesting for permission to invoke the provisions of Section 3 and 5 of the TADA by sending a report for this purpose. However, on such reference which was sent by fax message to the Chief Secretary by the Deputy Director General of Police and

Additional Director General of Police, the Additional Chief Secretary gave sanction/consent to apply provisions of TADA and the District Superintendent of Police was informed accordingly. The Apex Court held that there is nothing in the Act to suggest that Additional Chief Secretary should grant permission to District Superintendent of Police under TADA. The District Superintendent of Police did not act on his own to record information for commission of offence under TADA. The Apex Court held that this is a case where power conferred to one authority is being exercised by another authority. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. It was further held that the dictation came on the prayer of the District Superintendent of Police will not make any difference to the principle. The District Superintendent of Police did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under the TADA in exercise of his discretion. At this stage, it will be useful to quota para 11 and 14, which thus reads:-

> "11. The case against the appellant originally was registered on 19.3.1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1) ? This is a case of power conferred upon one

> authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instructions, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in DSP in this case by Section 20-A(1) was not exercised by the DSP at all.
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> 14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion.

10.1. In the case of Mansukhlal Vithaldas Chauhan vs. State of Gujarat, (1997) 7 SCC 622, the Apex Court was dealing with the matter where there was non-application of mind on the part of the authority in exercise of statutory power and it was held that such an order is bad. It was a case where the Government did not immediately grant sanction on the complaint of the complainant to proceed against the appellant under Section 161 and Section 5(2) of the Prevention of Corruption Act. Consequently, he filed Special Civil Application in the Gujarat High Court under Article 226 of the Constitution for a direction to the respondents namely the State of Gujarat and others to sanction prosecution of the applicant for offence under Section 161 and Section 5(2) of the Act. The Gujarat High Court partly allowed the petition and passed the following order:-

> "In the result, this petition is partly allowed. Respondent No.7 (newly added) is directed to accord sanction under the relevant provisions of the Prevention of Corruption Act to prosecute M.V.Chauhan who was

> working as Divisional Accountant of Medium Irrigation Project at Ankleshwar as stated above. It need not be stated that prosecution will be for offences punishable under the relevant provisions of law. Respondent No.7 is directed to accord sanction within one month from the receipt of writ of this Court.

The Govt. of Gujarat however in order to comply the directions given by the Gujarat High Court has no option but to grant sanction though reluctantly. The matter was carried to the Apex Court. The Apex Court held that the sanction order is wholly erroneous and discretion not to sanction the prosecution lies with the Secretary concerned and this decision was taken by the High Court, which is not permissible. At this stage, it will be useful to quota para 33 of the judgment which thus reads:-

> "33. The High Court put the Secretary in a piquant situation. While the Act gave him the discretion to sanction or not to sanction the prosecution of the appellant, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to an action in contempt for not obeying the mandamus issued by the High Court. The High Court assumed the role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction under Section 6 of the Act, it directed the Secretary to sanction the prosecution so that the sanction order may be treated to be an order passed by the Secretary and not that of the High Court. This is a classic case where a brand name is changed to give a new colour to the package without changing the contents thereof. In these circumstances, the sanction order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court."

10.2 Another authority which will have bearing on the facts of this case is that of Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office Manipal and Anr., 1991 (2) SLR 784. The issue before the Apex Court was whether it was permissible for the Ministry of Finance, Department of Economic Affiars, Banking

Division to inflict punishment as suggested by the CVC. The Apex Court held that proceedings of punishing authority of the Bank as well as before the Appellate Authorities are quashi judicial and un-restricted. The Finance Ministry, Government of India has no jurisdiction to issue such direction to Banking Institutions in regard to imposing punishment on its employees. This direction of the Ministry is wholly without jurisdiction and contrary to the statutory regulations governing disciplinary matters. As can be seen from para 7 of the judgement, contention of the petitioner before the Apex Court was that the punishing authorities did not apply their mind and did not exercise their power in considering the merits of his case. They have imposed on him the penalty of compulsory retirement in obedience of the advice of the CVC, which has been made binding on them by the direction dated 21 July, 1984 issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). They have blindly followed the advice given by the CVC without regard to the merits of the matter and contrary to the statutory regulations governing the departmental inquiries.

The said contention was repelled by the Bank on the ground that notwithstanding the advice of the CVC and the directive dated 21 July, 1984 of the Ministry of Finance, Department of Economic Affairs (Banking Division), the case of the petitioner has been

received the fullest consideration from the disciplinary and appellate authorities. They have independently considered the material on record both on the article of charges and also on the appropriate punishment of compulsory retirement imposed on the petitioner. The orders of the authorities do not refer to the circulars of the Bank, nor to the punishment proposed by the CVC. It is, therefore, illegitimate, to content that the punishment imposed on the petitioner has been vitiated by extraneous influences. The Apex Court after noticing the contentions raised by both the parties in para 19 held as under:-

> "19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot not act under the dictation of the Central Vigilance Commission or the Central Government. No third party like the Central Vigilance Commission or of the Central Government could dictate the disciplinary authority of the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edution p.309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."

10.3 At this stage, we may also notice another decision of the Apex court in the case of Union of India and ors. vs. B.N.Jha 2003 SCC (L&S) 488. That

was a case where respondent before the Apex court was a Deputy Commandant in Border Security Force, Training Centre and School (TCS). The Unit Commandant of TCS happened to be one Shri B.S.Garcha. In or about July, 1990 the respondents was accused to having received gratification from two persons, namely, B.K.Jha and Santosh Kumar Jha for procuring their recruitment as constables in BSF. Shri Garcha allegedly examined the said two persons as also the respondents. An alleged confession about the commission of the offence is said to have been made before him by the respondent. He was thereafter posted to the Basic Training Centre, one of the wings of TCS. Shri Garcha then asked one Shri M.S.Arya, Commandant BTC to initiated a disciplinary proceedings against him by writing a letter which has been reproduced in para 4 of the judgment. Accordingly charge sheet was drawn against the respondent. A proceeding for recording of evidence against the respondent thereupon was initiated. He raised an objection about the validity of the proceedings but the same was rejected. The respondent thereafter was transferred to the 127 Bn in Punjab but he was retransferred to TCS Hazaribagh for the purpose of facing his trial by the General Security Force Court. In the trial held by the General Security Force Court, the respondent was found guilty of the charge and by an order he was sentenced to dismissal from service. The respondent filed a writ petition in the High Court

challenging that order. A Single judge of the High Court inter alia held that there had been a gross violation of Rule 45-B and 46 of the Border Security Force Rules. Appeal preferred before the Division Bench was dismissed. The matter was further carried to the Apex Court. The Apex Court in para 39 of the judgment had held that Rule 45-B of the Rules leave no manner of doubt that the Commandant of the accused is required to apply his mind on the materials on record so as to enable him to arrive at a finding in favour or against the officer. The manner in which the charge sheet has been drawn leads to only one conclusion that Mr. Arya did so only on the command of Mr. Garcha. Under these circumstances, it was held that the findings of the Single Judge and the Division Bench cannot said to be perverse or contrary to law.

11. Now let us examine the matter in the light of the law laid down by the Apex Court. In the instant case, it will be useful to quote para 1,2 and 3 of the impugned memorandum dated 25.4.2006 which thus reads:-

> "The president proposes to hold an inquiry against Shri Durgesh Shankar, Commissioner of Income Tax-I, Jaipur (IRS Civil List Code 73038), under Rule 14 of the Civil Services (Classification, Control and Appeal) Rules, 1965. the substance of 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 imputations of misconduct or misbehavior in support of the articles of charge is enclosed (Annexure-II). A list of documents by which the articles of charge are proposed to be sustained is also enclosed (Annexure-II). Copies of CVC's advice dated 12.1.2004 and dated 17.3.2006 are enclosed.
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> 2.Shri Durgesh Shankar, Commissioner of Income Tax is directed to submit within 20 days of the receipt of this Memorandum a written

statement of his defence and also to state whether he desired 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 or charge."

From perusal of Para 1 of the aforesaid Memorandum, it is clear that the Disciplinary Authority has enclosed not only the substance of the imputations and misconduct or misbehavior in respect of which the inquiry is proposed as Annexure-I, statement of imputation of misconduct or misbehavior in support of article of charge as Annexure-II, list of documents by which article of charge are proposed to be sustained as Annexure-III but he has also enclosed copies of advice of the Central Vigilance Commission dated 12.1.2004 and 17.3.2006. Thus, from perusal of Para 1 it is clear that the Disciplinary Authority has also taken into consideration the letter dated 12.1.2004 and 17.3.2006 while issuing the charge sheet. At this stage, it will be useful to extract these two letters which form part of the impugned memorandum/charge sheet dated 25th April, 2006. The CVC Note dated 12th January, 2004 is to the following effect:-

"The Commission examined the reference of the M/o Textiles and observed that the irregularities which have been prima-facie established during the preliminary enquiry against Shri Durgesh Shankar are grave in nature. Therefore, the Commission would advise the Ministry of Textiles initiation of major penalty proceedings against Shri Durgesh Shankar CMD-CCIC. The Commission would also nominate Shri R.N.Dash-CDI CVC as IO for conducting departmental inquiry against him. Appointment order of IO may please be issued under intimation to the Commission. "

Office Memorandum dated 17.3.2006 is also in the following terms:-

> "DGIT (Vig.) may please refer to their letter No.NZ/Com/59/97 dt. 09.03.06 on the subject above.
>
> 2. The Commission agrees to the inclusion of the two charges (relating to irregulaties in engaging Lt. Col. Rekhi as Selling Agent and Ms. Payal Kapoor as Interior Design Consultant) in the charge-sheet to be issued to Shri Durgesh Kapoor.
>
> 3. As the Deptt. would agree, the case has already been delayed considerably in that the Commissioner's first stage advice dt. 12.01.04 is yet to be acted upon. Deptt. if accordingly advised to ensure that the charge-sheet is served on Shri Shankar within a month positively, under intimation to the Commissioner. Deptt. must also ensure that the case is entrusted to the IO thereafter without any further delay."

Thus from reading of these two letter and more particularly para 3 of the OM dated 17.3.2006, it is evident that the CVC has given direction to the Department that they should ensure that charge sheet is served on Shri Durgesh Shankar immediately under intimation to the CVC and Department must also entrust the case to the IO thereafter without any further delay. According to us, such directions given by the CVC is without jurisdiction and contrary to the statutory provisions as contained in CCS (CCA) Rules, 1965. At this stage, it will be useful to quota rule 14 (2) of CCS (CCA) Rules, which is in the following terms:-

> 14. Procedure for imposing major penalties.
>
> (1) .....
>
> (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct of misbehavior against a Government servant, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

12. Thus, sub rule (2) mandates that it is the satisfaction of the disciplinary authority, who has to form independent opinion as to whether there are grounds for inquiry or any imputation of misconduct or misbehavior against a Government servant and not any other authority. As already stated above, the CVC has no jurisdiction to direct the disciplinary authority to issue charge sheet within one month and also to appoint inquiry officer. Not only this, perusal of advice dated 12th January, 2004 shows that the CVC has nominated one Shri R.N.Dash as inquiry officer for conducting departmental inquiry against the applicant. In this letter, it is also mentioned that appointment letter of inquiry officer may be issued under intimation to the Commission. Thus, we are of the view that it is a case where the disciplinary authority has not formed opinion independently as required under rules but the decision to initiate disciplinary action against the applicant has been taken under the dictates of the outside agency i.e. CVC which was not legally permissible. At the cost of repetition, it is further stated that it was not the function of the CVC to command the disciplinary authority that charge sheet should be served within one month and inquiry officer be appointed under intimation to the Commission which action of the CVC is not only without

jurisdiction but amounts to abuse of power which is not vested with the Commission under Law.

13. At this stage, we may also notice the provisions of Rule 14 (4) of the CCS (CCA) Rules, which thus reads:-

> "(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desired to be heard in person."

From perusal of the aforesaid sub-rule, it is clear that only Annexure-I, II and III as referred to in para 1 of the OM dated 25th April, 2006 should have formed part of the charge sheet. In this case, the disciplinary authority has also annexed copy of CVC advice dated 12.1.2004 and dated 17.3.2006 as part of the charge sheet. It is not understood under what provision the disciplinary authority has formed these documents as part of the charge sheet on the face of sub-rule (4). This fact itself shows non-application of mind on the part of the Disciplinary authority. Besides it, as already stated above, the disciplinary authority has placed reliance on the CVC advice dated 12.1.2004 and 17.3.2006 by enclosing the said documents thereby forming part of the chargesheet which fact proves that the disciplinary authority has depended on the advice of the CVC while issuing the charge memo dated 25.4.2006. Thus, ipsi dixit of the

respondents that the disciplinary authority accorded approval for initiating disciplinary proceedings only after considering all the material on record, in consultation with the CVC and after due application of mind cannot be accepted, in the face of the law laid down by the Apex Court in the case of Nagaraj Shivarao Karjagi (supra) whereby the Apex Court has categorically held that authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the CVC or of the Central Government. It was further held that no third party like the CVC or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power. In the instant case, as already stated above, the disciplinary authority has acted under the dictates of the CVC without applying his mind independently which was pre-requisite for exercise of powers under the CCS (CCA) Rules. Even the Apex Court in the case of Manshukhlal Vithaldas Chauhan (supra) has deprecated action of the High Court in giving direction to grant sanction under Section 197 thereby exercising power which is vested with the Secretary who has to apply his mind independently as per the statutory provisions and held that the Secretary have granted the prosecution sanction mechanically probably on the face of contempt proceedings. Under these circumstances,

the sanction order was held wholly erroneous and having been passed mechanically at the instance of the High Court. If one has regard to the ratio as laid down by the Apex Court the only inference which can be legitimately drawn in this case is that the disciplinary authority has issued the chargesheet mechanically at the instance and dictates of the CVC which course was not open to the authority and such action of the authority concerned is wholly erroneous. Further, it appears that the disciplinary authority had already made up his mind to initiate inquiry and to appoint inquiry officer in terms of the CVC advice, and the opportunity given to the applicant vide para 2 of the impugned charge sheet to submit written statement of defence was only a formality. This fact also shows non-application of mind on the part of the authority concerned.

14. Thus, we are of the view that the impugned directive of the CVC dated 12.1.2004 and 17.3.2006 so far as it relate to direction to the Department to issue charge sheet within one month and to apprise them about the same and also to appoint inquiry officer is without jurisdiction and authority of law. The net result of aforesaid discussion is that the impugned charge sheet which has been issued at the instance and dictates of the CVC is quashed. However, we hasten to add here that we have not given any

finding on the merit of the case and it will be open for the respondents to proceed in the matter in accordance with law. The applicant shall be entitled to all consequential benefits arising out of quashing of charge memo as prayed by him in relief clause 8(c) as the learned counsel for the applicant has argued that his name is at Sl.No. 73038 in the seniority list. Persons upto Sl. No.73010 have already been promoted. Thus, against 44 vacancies of Chief Commissioner the applicant not only comes within the zone of consideration but within the number of vacancies meant for promotion. In any event, from the material placed on record, it is clear that case of the applicant for promotion was considered by the DPC but was kept in the sealed cover due to issuance of charge sheet which charge sheet has been quashed by us. Thus as per the law, sealed cover has to be opened and recommendations of the DPC has to be acted upon.

14. Before parting with the matter, we will fail in our duty if we do not notice the only judgment relied by the respondents in the case of Union of India vs. Vinoy Gupta, where it was held that the Tribunal was not justified in quashing the memorandum of charge issued to the applicant without waiting for the outcome of the findings of the disciplinary authority in the disciplinary proceedings initiated against the officer. According to us, this judgment is not

applicable in the facts and circumstances of this case. That was a case where chargesheet was quashed by the Tribunal while going into the merits of the charges framed against the applicant therein. There cannot be any dispute to this proposition of law as it is well settled that power of judicial review cannot be extended to the examination of correctness of charge. However, in the instant case issue is entirely different viz. that there is non-application of mind in issuing the charge sheet and the same has been issued at the dictate of the CVC contrary to statutory rules. Thus, the said authority is not applicable in the facts and circumstances of this case.

15. In view of the findings recorded above and more particularly in view of the observations made in para 5 above, we are not inclined to issue notices on this Contempt Petition, which shall stand dismissed.

16. With the aforesaid observations the present OA is allowed with no order as to costs.

(J.P.SHUKLA)
Administrative Member

(M.L.CHAUHAN)
Judicial Member

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