CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

Date of Order: 25.09.2013

OA No. 216/2009 with MA No. 331/2013

Mr. Virendra Lodha, senior counsel, assisted by
Mr. Vinod Goyal, counsel for applicant.
Mr. Gaurav Jain, counsel for respondents.

Arguments heard.

Order is reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER

Kumawat

Date- 19/2/2014
Order pronounced today in the open court by the Bench.

19/2/14

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Pre-delivery judgment for concurrence

OA/TA/RA/CP. No.216/2009 with M.A.NO.331/2013

BETWEEN

Sri/Smt/Kum. Ram Avtar Verma .... Applicant

(By ShriVirendra Lodha, Senior Counsel with
Shir Vinod Goyal, Advocate)

Vs.

Union of India and Others .... Respondents

(By Shri Gaurav Jain, Advocate)

Dear Brother,

Draft order in the above mentioned case is sent for concurrence/approval

In para 24 of the Order the date of impugned order is mentioned as 20.4.2008. It is a typographical error. I have corrected it as 21.4.2009. Member (J) has been apprised on phone.

(DR.K.B.SURESH)
MEMBER (J)

HON'BLE SHRI ANIL KUMAR
MEMBER (A)

If approved the same order be pronounced on behalf of the DB.

(DR.K.B.SURESH)
MEMBER (J)

HON'BLE SHRI ANIL KUMAR
MEMBER (A)

P.S. How are you?

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

ORIGINAL APPLICATION NO.216/2009 WITH
M.A.NO. 331/2013

DATED THIS THE 19th DAY OF FEBRUARY, 2014

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI ANIL KUMAR, MEMBER (A)

Ram Avtar Verma,
Aged about 50 years,
Son of Shri Nathmal Verma,
C/o Lucky Farm House,
Hrmada Chungi Naka,
Sikar Road,
Jaipur.
At present holding the post
of Joint Commissioner, Income Tax,
Jaipur. ....Applicant

(By Shri Virendra Lodha, Senior Counsel with
Shri Vinod Goyal, Advocate)

Vs.

1.The Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
New Delhi.

2.Chief Commissioner of Income Tax,
Jaipur C.R.Building,
Statute Circle,
B.D.Road, Jaipur. .....Respondents

(By Shri Gaurav Jain, Advocate)

ORDER

DR.K.B.SURESH, MEMBER (J):

The issue in a nutshell would be to what extent can a quasi judicial authority acting under a Statute can be controlled /guided by an administrative authority superior in administration..

2. The applicant is a 1985 batch IRS Officer who was posted at Ahmedabad and thereafter came on transfer to Jaipur . On holding the post of Joint Director, Income Tax he was suspended by the first respondent as he was detained in Police and judicial custody for a period exceeding 48 hours as he was arrested on 11.06.2002 and was remanded to police custody till 24.06.2002. Apparently a case under Section 13 of the PC Act was registered against him. Thereafter an enquiry was also decided to be held against the applicant and vide order dated 14.10.2002 charge Memo. Was issued to him. The charges were that while the applicant was working as Deputy Commissioner at Trivandrum he accepted without any enquiry highly doubtful claims of lower income made by an Assesse Dr.Rani Bhaskaran Nair and directing the assessing Officer to complete the assessment accordingly the charge one says that the applicant thereby offered undue benefit upon the assesse. The second charge was that the applicant while at Trivandrum completed the assessment of Muthoot Financiers readily accepting the highly doubtful claim of depreciation made by the assessee and thereby conferred undue benefit upon the assesse. The third charge is that while at Trivandrum he completed the assesment in the case of Messrs.Silpi Construction Contractors without carrying on necessary verification regarding the low profit

shown by the assesse and granted refund. The fourth charge is that in the case of one Shri B.Anil Kumar he ignored the repeated submissions of the assessing Officer and allowed the claim of the assesse. The fifth charge is that while at Trivandrum in the case of one M/s Danya Construction Company he had accepted without any verification huge and doubtful payment of labour payment and thus conferred undue benefit upon the assesse. All these are part of his judicial functioning.

3. The applicant seems to have given a written brief on 13.10.2006 wherein he explains the methodology of his functioning. He would say that he was guided under the ambit of Section 144(a) of Income Tax Act. He would also say very pertinently that if such an order was passed against law, Section 154 of the Income Tax Act rectification of such mistake was possible. He would say that no such mistakes had been pointed out in the order which set aside under Section 263 of the Income Tax Act the appeal filed by the prosecution on date 26.03.2001. He would say that the assessing officer in the report dated 09.02.1998 had proposed three figures purely on the basis of estimation and without support of enquiry or evidence and then goes on to explain the same. He would say that regarding article-1 the Appellate Authority had found in the applicants favour. Regarding the second article of charge he would say that the word Critical Examination are not defined anywhere in the Income tax Act or the rules and such instructions are also not available.

4. It is to be remembered that if there is to be a more close intermingling of administrative authority and the quasi judicial authority the adjudication will be a failure. It is pointed out that administrative failure on calculating that in reference to second charge remedial action under Section

263 could not be taken as the time limit was expired. But then nothing prevented them from requesting the condonation of delay as, if a matrix constitute a fraud then no limitation can destroy a claim based on fraud. It is also pointed out by the applicant that in similar case at Kattappana and Changanasery the same benefit had been allowed by the same department and it was never rectified.

5. Coming to the third charge remedial action under Section 147 and 148 was taken but apparently the notings of discrepancies was completely deleted by the Appellate Authority of that department themselves and finally settled and therefore the assessment order passed by the applicant became final and non reproachable and he would claim that the refund of Rs.51,930/- was granted by the predecessor Shri Amba Shankar Dev on 30.09.1996 and what he did was only to allow for the refund to be calculated in the assessment. He would say during the hearing the assesse produced details which was submitted subsequent to the search which was not relied upon by the Assessing Officer but then what is wrong in the assesse submitting details which is not relied upon the Assessing Officer. Regarding the charge number 5 it was about accepting huge and allegedly doubtful payments of labour payments and the applicant says that the department tough credence of these complaints only because of the hugeness and nothing more and he had given explanatory details regarding each payment. We need not go into the mitty gritty of whether the payment was made to Tennyson, Chandran or Balan. We have gone through the enquiry report and found that the articles are not specifically proven to the extent which it requires but most of the findings are vague meanderings.

6. The enquiry Officer's findings that the article No,2 was proved is on the basis that even though remedial action under Section 263 was not taken on assessment order was passed in 1998 as within 2 years remedial action ought to have been taken but that crucial question is that a remedial action was possible. Even though a delay was there, if there are sufficient grounds of fraud, the matter could have been reopened. But then, there must be conviction of wrong doing and not mere suspicion. The A.G. Audit had also not found any discrepancy regarding 50% claim to be settled and that the identical case in Kattappana and Changanasery was also similarly of 100% depreciation and was allowed yet the Enquiry Officer would say that charge number 2 was justified. But from the vague explanation it was not clear whether he justifies the charge or holds it as proved. But then as the basis for his claim he would say **"admittedly the CO had no direction from the higher authorities as to what should be discussed in the order sheets and what records are to be retained the assessment in the sister concern and exhibit S4 and S5 which is not in the case of Exhibit S2.** Then he holds that charge is proven **in other words a quasi judicial officer has to work under the guidelines and advise to be issued by an administrative authority or else he will be penalised."** Regarding article 3 the enquiry Officer indicates that the applicant had not considered all the parameters while deciding to add a lumpsum amount of Rs.26,000/-. Therefore he holds that article 3 is held as partly proved. On what grounds this is being done is suspect. Regarding the next charge it is stated that the applicant had allowed documents to be produced by the assesse to prove his case other than what was found by the assessing officer. But then what else he was supposed to do

as a quasi judicial officer when a assesse challenge an order against him and produces the evidence to assert his claim. Is it incumbent upon him to reject it or is it his duty to evaluate is the question. But he held, surprisingly, that even though the department filed an appeal it could not be proceeded as for statistical purposes the appeal was dismissed what does it mean and **how does the Enquiry Office know what one had in the mind of a superior authority which would also be acting in a quasi judicial capacity if such an officer had upheld assessment in the appeal against the decision of the applicant how it can be agitated again departmentally ? How can it be said that article 5 was partly proved?**

7. The respondents in their written argument note submits that judicial authorities are not to go into the merits or demerits of the article of charge and would like to rely on the Hon'ble Apex Court in ***B.C.CHATURVEDI VS. UNION OF INDIA AND OTHERS reported in AIR 1996 SC 484*** wherein it is stated by their Lordships that the power of judicial review is meant to ensure that every individual receives fair treatment and whether the findings or conclusions are based on some evidence. It is true all findings and conclusions must be based on evidence. The quantum of evidence is determined by the issue.

8. They would say that even vague and purposeless evidence would contribute some evidence even if it is disjointed and palpably unacceptable or even against the stream of logic.

9. The respondents would rely on ***UNION OF INDIA VS. H.C.GOEL REPORTED IN (1964 4 SCR 781)*** wherein their Lordships found that if the conclusion, upon the consideration of evidence, reached by the disciplinary

authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

10. The respondents submitted that in the case of ***UNION OF INDIA AND OTHERS VS. S.L.ABBAS reported in (1993) 4 SCC 357).*** the Apex Court held that Tribunal is not an Appellate Authority. This is definitely so a Court of law under service jurisprudence is not acting as an Appellate Authority but at the same time as a sentinel democratic polity and the repository of fair and clean governance and caused out responsibility. It is the duty of any body acting under judicial review under article 226 to see with an eagle eye in order to protect the concept of fairness and justice. The issues which unravel before it. The respondents relied on the Apex Court judgment ***STATE BANK OF INDIA AND OTHERS VS. SAMARENDRA KISHORE ENDOW AND ANOTHER REPORTED IN (1994) 1 SCC) 217.*** It held that the Tribunal can not substitute its own conclusion to that of the disciplinary authority, without any doubt this is also a correct view as acting under 226 or 32 no Court need to substitute a view in any adjudicatory matrix as that is best left to the lower levels of administrative authorities, what an adjudicatory body would and should say is whether an act under challenge is correct or not. If the degree of incorrectness in it exceeds normal parameters then it is the responsibility of the Courts to correct the lacunae either by quashment or proactively and in public interest in substitution.

11. The applicant contends that the issue had been cooked up by the CBI which had apparently , foisted an incorrect allegation on him but after having acted rashly and finding no evidence, the applicant alleges that it has sat on the shoulders of concerned authorities and made them to act as per its

dictates. The learned counsel would lament that the CBI had exceeded all its jurisdictional responsibilities and by trying to cover up its failure by making the administrative authorities their tools. He refers to the letter written by CBI on 03.02.2003 the letter indicates that **"the applicant has not submitted a statement 1 to 6 though it has been requisitioned by CBI he is also making frivolous steps to delay the investigation of the case. He may be directed to co-operate with the investigation so that it can be expeditiously concluded. It is therefore requested that in the interest of investigation Ramavatar Sharma may continued to be kept under suspension".** If we can concluded that police power under Delhi Police Establishment Act can direct the administrative authority to act in a particular way for testimonial compulsion that will tantamount to compromising constitutional provisions, says the applicant. The applicant's counsel would contend that repeatedly and compulsively confession was sought for in continual defiance of article 20 sub clause (3) of the Constitution of India by the CBI. He would say that **"the competent authority reduced the subsistence allowance of the applicant vide order dated 03.04.2003 by 25% at the instigation of the CBI.** This he would say was that compelled the applicant at first to admit at least partially to some of the charges. The Rule stipulate only enhancement of subsistence allowance and the reduction by any manner would mean that ability of the charged employee to defend the charges against him would be diminished to that extent as the life and livelihood of a person would be diminished to that extent and degree. A man who is not capable of continued living can not obviously defend any charge against him.

12. Therefore the applicant would contend that the framing of charges against him and the methodology of it being conducted in a whole consequence is the result of extraneous consideration and not for the purpose of maintenance of purity in administration. They would say that even if investigating authority has given some in puts but before passing any orders on the basis of it the authority ought to have offered reasonable opportunity to the applicant to make a representation. He dwells on the order in O.A.NO.367/2002 and O.A.165/2004 and the scant regard shown by the administrative authority about it. He would say that the impugned order are initiated by a falsehood and propagated by non application of mind and vitiated by, pre determination of guilt as prevention by the proper adjudicatory stand taken by the authority and the permeation of extraneous influence in the issue. He relies on Section 144,147, 148 and 263 of the Income Tax Act to say that even when an appeal had been dismissed on merits and applicant's order sustained the position taken by the applicant seems to be assailed by the disciplinary authority by a charge. They would say the jurisdictional Kerala High Court's findings in the case of 244 IPR 452 seems to be completely ignored. The applicant relies on ***M/s.MAHABIR PRASAD SANTOSH KUMAR VS. STATE OF U.P. REPORTED IN AIR 1970 SC 1302*** and other similar judgments of the Hon'ble Apex Court with regard to powers and responsibilities of quasi judicial authorities and relies on ***SHER BAHADUR VS. UNION OF INDIA AND OTHERS REPORTED IN 2002 (7) SCC 142*** which explains the expression of sufficiency of evidence which postulates the extent to which the charged official can be linked to claim mis conduct against him. Therefore the Enquiry Officers notings would not in principle satisfy the rule of sufficiency of

evidence. Therefore evidence must be proximate and having nexus to evidence required and insignificant defence

13. In ***UNION OF INDIA AND ANOTHER VS. R.K.DESAI REPORTED IN 1993 24 ADMINISTRATIVE TRIBUNAL CASES 74*** the Hon'ble Apex Court found that decision taken by an officer in exercise of quasi judicial function is alleged to be out side the pole of integrity against the officer and in such case the test is as in the case of Section 177 CRPC when within the scope of official duty unless it is a case of palpably erroneous decision. While quoting several other judgments of the Hon'ble Apex Court, Apex Court found that in that case allegations were made that benefits were granted in disregard of the Central Board of Direct Taxes's direction but apparently there was no extraneous consideration proven. **The Apex Court held that even if erroneous or wrong refunds were allowed no disciplinary action can be taken as the person was discharging a quasi judicial function.** This case is similar to the present one as it had been on an appeal from the decision of CAT, Ahmedabad in relation to the Income Tax officer in ***ZUNJARRAO BHIKAJI NAGARKAR VS. UNION OF INDIA AND OTHERS REPORTED IN AIR 1999 SC 2881*** their Lordships held that to maintain any charge sheet against a quasi judicial authority something more has to be alleged and proven than a mere mistake of law. In this particular case no such seizures were made from the applicant to cement the charges under Section 13. Hon'ble Apex Court held a wrong interpretation of law can not be a mis conduct. **In this case applicant's order was upheld in appeal.**

14. Since the matter has been put up before us we had held a thorough search of acts and rules to find out the extent of quasi judicial

functioning available under various acts and rules. We found that about 30 to 40% of litigation in the country is handled by quasi judicial authorities under one statute or other. Therefore, the position of a quasi judicial officer is of nodal nature in the justice delivery system. **If the department under which he works is in a position to exert any sort of control over his working it will have an impact on his mental make up and impartiality. The quasi judicial officer is enjoined and called upon to and pass judgment in respect of the matters in which his department is deeply interested. But yet he is called upon to deliver judgments passed by depending on his conscious knowledge of law and based on his ability and without any bias. If any control is to be exercised by superior officers of the department over the quasi judicial officer, it is so perverse that it will defeat the whole structure of quasi judicial determination and in such a situation a quasi judicial determination becomes adjunct to a department decision and therefore, detrimental to public interest and therefore negated the Constitution.**

15. **The independence of judiciary requires protection to judges for the decision taken by him, so it may probably be construed that a judgment of a judicial officer may be right or not; but the rightness and wrongness of a judicial order has to be contested only through the hierarchy provided through out the judicial system and not by collateral means. Such a rule providing for collateral control under whatever guise will reduce the independence of judiciary and render quasi judicial activity to the level of being only an exercise in futility by already taken departmental decision which he will be called upon to blindly support and**

this will defeat the system of quasi judicial determination.

16. We have carefully examined the articles of charges against the applicant. The articles of charge is absolutely in the realm of judicial determination. If the department is aggrieved by judicial determination the only way available to them is to approach the appellate or revisional authority as the case may be which they had done and failed. **They can not, definitely, hold a disciplinary enquiry against the applicant for a decision he had taken in the course of his working as a quasi judicial officer for a factor within the scope of such judicial determination.**

17. Since requirement of independence of quasi judicial forums over shadow smaller lacunae like this in greater public interest. **The respondents would submit that the assessing officer should be guided by investigating officer, but this averment create dangerous precedents and tantamounts to a Magistrate being guided by a police officer in the discharge of his duty and that it can only be hoped that the respondents said so without understanding the gravity of it, it is important that process and procedures of a quasi judicial authority are also protected.**

18. The quasi judicial authorities are created within the department itself to ensure that a process of determination which is balanced and unbiased is made available. The process and procedures of a judicial officer are also made and organised to ensure the independence of a judicial officer and **unless this cardinal factum is maintained the quasi judicial authority loose its relevance and reverence in the public mind.** Therefore, in the

larger aspect it is in greater judicial importance to work out a method by which independence and integrity are matched. **The volume of litigation in the country as handled by quasi judicial authorities points out the need to afford them also the same protection given to Judges; in greater and larger public interest.**

19. The Hon'ble Supreme Court in ***Union of India and Others vs. K.K.Dhawan,*** (1993) 2 SCC 56, in para 28 and 29 had come to the following conclusion on this aspect;

> "28.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 assessment 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 a 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".

29. The instances above catalogued are not exhaustive. **However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted.** Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

And, therefore, the respondents would submit that they had a right to initiate disciplinary action against the applicant even though he was a quasi judicial officer.

20. It is said that the investigating authority had put a value on the assessment report to which the counsel for the applicant explained that glory hunting is a normal human failing and as a result of which if an investigating officer claims that the seized articles to have a higher value, that by itself can not be taken up as a statement to be accepted. If investigating officer's report is to be treated as the last word, there is no need for assessment. We examined the charges and found them to be vague without any specificness and findings are curious to say the least.

The Apex Court further held:

"The test to be adopted in such cases is as stated by this Court in the cases of Union of India and Others, Vs, A.N.Saxena, 1992 (3) SCC 56. In K.K.Dhawan case (supra), this Court indicated the basis upon which a disciplinary action can be initiated in respect of a judicial or a quasi-judicial action as follows:

Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty:

(i) Where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

(ii) That there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) That if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(iv) that if he had acted in order to unduly favour a party;

(v) that if he had been actuated by corrupt motive

Dealing with a matter of similar nature in Ishwar Chand Jain vs. High Court of Punjab and Haryana and Another 1988 Supp. (1) SCR 396, the following observations were made by this Court:

"....**While exercising control over the subordinate judiciary under the Constitution, the High Court is under a constitutional obligation to guide and protect judicial officers. An honest, strict judicial officer is likely to have adversaries. If complaints are entertained on trifling matters relating to judicial officers which may have been upheld by the High Court encourages anonymous complaints, no judicial officer would feel secure, and it would be difficult for him to discharge his duties in an hones and independent manner. An independent and honest judiciary is a sine qua non for the Rules of law. It is imperative that the High Court should take steps to protect its honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants** [p.409]"

21. In the present case, though elaborate enquiry has been conducted by the Enquiry Officer, there is hardly any material worth the name forthcoming except to scrutinize each one of the orders made by the applicant on the judicial side to arrive at a different conclusion. **That there was**

possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The Enquiry Officer has not fund any other material, which would reflection his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best he may say that the view taken by the applicant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K.Dhawans case [supra] and A.N.Saxena case [supra} that **merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer.** In spite of such caution, it is unfortunate that the authorities has chosen to initiate disciplinary proceedings against the applicant in this case especially since the Appellate Authority upheld the applicant's orders

22. **Thus we find that the findings recorded by the Enquiry Officer are totally vitiated for want of any legally acceptable or relevant evidence to support the charges of misconduct. In the absence of any evidence, the Enquiry Officer could not have reached the conclusion in the manner he did, and these findings affirmed by the disciplinary**

authority also stand vitiated".

23. In ***A.K.KRAIPAK V. UNION OF INDIA, REPORTED IN*** **AIR 1970 SC 150**, the Hon'ble Supreme Court had held:

> ***"The dividing line between an administrative power and a quasi-judicial power is quite thin and is gradually being obliterated. For determining whether a power or a quasi-judicial power one has to look to the nature of the power conferred, the persons or person on whom it is conferred, the framework of the law conferring that power, the consequences ensuring from exercise of that power and the manner in which that power is expected to be exercised. Under the Constitution of India, the rule of law pervades over the entire field of administration. Every organ of the State under the Constitution is regulated and controlled by the rule of law. In a Welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of the rule of law would lose its vitality if the instrumentalites of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirements of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily and capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate, if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new depositism Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedent. New problems call for new solution. It is neither possible nor desirable to fix the limits of a quasi judicial power".***

In ***ZURJARRAO BHIKAJI NAGARKAR VS. UNION OF INDIA, AIR 1999 SC 2881,*** the Hon'ble Supreme Court had held:

"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 does not proceed on any legal 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, e.g., 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. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities; 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 principles which comes out of this matter are:

(i) The independence of quasi-judicial authority are of paramount importance to Rule of law and greater public interest.

(ii) Control by superior officers of a quasi-judicial authority in relation to his judicial functions will water down the fearlessness and impartiality expected of a judicial officer and will bring down the concept of fair process and procedure of judicial determination.

(iii) The Article of charges relates to a judicial function and can be questioned only in Appellate and Revisionary forum and not in collateral terms.

(iv) It cannot be concluded from the circumstances that the applicant conducted himself in a blame worthy manner in the

conduct of judicial proceedings.

(v) No charge of undue favour can be laid as the department had not tested the findings in an appellate procedure/rectification except once and it failed

24. This is corroborated by the fact that nothing was found out by the CBI, of worth , it appears that there some merit in the contention of the applicant that the failure of the CBI had energised them into creating a patina of suspicion and some compulsions had engineered this issue. Therefore the impugned order dated ~~20.04.2000~~ 21.4.2009 is declared illegal, arbitrary and opposed to natural interest and quashed. But since we think that it might be because of over zealousness of the departmental officers or their fear or subjugation in submitting to the authority of the CBI we are not imposing any cost on the respondents. Therefore OA allowed without costs.

(ANIL KUMAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER (J)