Central Administrative Tribunal
Principal Bench
New Delhi

OA No.589/2015

Reserved on : 01.08.2016
Pronounced on : 08.02.2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)

Amresh Jain S/o B. C. Jain,
Deputy Commissioner Customs & Excise,
R/o 6055/2, D-6 Vasant Kunj,
New Delhi-110070. ... Applicant

(By Advocate: Mr. A. K. Behera)

Versus

1. Union of India through its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-1.

2. Central Board of Excise & Customs,
through its Chairman.
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001. ... Respondents

(By Advocates: Mr. Gyanendra Singh)

O R D E R

Justice Permod Kohli, Chairman :

Challenge in the present OA relates to memorandum No.13/2010 dated 04.06.2010 whereby the disciplinary authority initiated disciplinary proceedings against the applicant under rule 14 of the CCS (CCA) Rules, 1965 for major penalty, as also to an order

dated 18.02.2014 rejecting the representation of the applicant against initiation of disciplinary proceedings. The factual premises upon which this OA has been filed is being noticed hereinafter.

2. The applicant was offered appointment as Assistant Director in the National Productivity Council, a Government of India owned undertaking, having been appointed vide order dated 05.10.1990 pursuant to his selection. He joined the said organization on 10.10.1990 as Assistant Director, a Group 'A' post in pay scale of Rs.2200-4000, as is evident from the appointment letter dated 20.12.1990/08.01.1991. While being in service of the National Productivity Council, the applicant was selected to the Indian Revenue Service (IRS) (Customs & Central Excise) Group 'A' as direct recruit where he joined on 11.10.1992. He was thereafter promoted as Deputy Commissioner (Customs & Central Excise) in Senior Time Scale in the year 1996.

3. An FIR came to be registered against the applicant, being FIR No.8/2002 on 21.02.2002 u/s 109 IPC read with sections 13(1)(e) and 13(2) of Prevention of Corruption Act, 1988 by CBI, Chandigarh, alleging possession of disproportionate assets. The applicant was detained in custody by CBI on 23.02.2002. Since his custody exceeded 48 hours, he was deemed to have been suspended with effect from the date of detention vide order dated 15.03.2002. The

applicant has alleged promotion of his juniors to the post of Joint Commissioner (Customs & Central Excise) and thereafter to the higher posts in the Junior Administrative Grade (JAG), JAG (NFSG) and then to Senior Administrative Grade (SAG). These details being not relevant to the issues involved in this Application are not being dealt with in detail.

4. The applicant made a representation against his suspension alleging bias against the then DIG, CBI, Chandigarh, who was said to be a relation of the tenant of the applicant's wife. On his representation, a note was prepared on 24.12.2003 stating therein that the applicant was victim of bias of the DIG, CBI, Chandigarh. Based upon the said note, the suspension of the applicant was revoked vide order dated 12.10.2009. For purposes of criminal trial, CBI vide its letter dated 20.10.2004 prepared a draft sanction order and forwarded the same to the Ministry of Finance for approval. In the said draft order, the check period for calculation of income of the applicant was taken as 11.10.1992, and based upon the said draft the competent authority granted sanction vide order dated 28.06.2005. The criminal trial against the applicant is stated to be pending. During the pendency of the criminal proceedings, the applicant was served with the impugned memorandum No.13/2010 dated 04.06.2010. The said memorandum is accompanied with the statement of articles of charge

framed against the applicant. From a perusal of the articles of charge, it is evident that the entire basis for the disciplinary proceedings is the criminal investigation conducted by CBI, wherein alleged disproportionate assets of the applicant have been assessed to the tune of Rs.1,55,09,518/-. This memorandum was issued after eight and a half years of registration of the FIR, and about five years from the date of grant of sanction for prosecution. The applicant made representation against the charge memorandum and prayed for dropping of the charges against him. The respondents in the meantime appointed the inquiry officer and presenting officer and proceeded with the inquiry. The applicant filed OA No.3652/2012 in this Tribunal challenging the impugned memorandum dated 04.06.2010. The said OA was disposed of vide order dated 25.10.2013 with the following observations/directions:

> "3. During the course of hearing, Shri Behera, learned counsel stated that he would make a comprehensive representation to the respondents espousing the plea (ibid) taken in the present Original Application. He may do so within a period of two weeks from today. In case such representation is preferred, the disciplinary authority would decide the same as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the representation. Till disposal of such representation, further proceedings initiated vide Memorandum No.C-14011/9/2002-Ad.V(B) dated 4.6.2010 would remain stayed. It goes without saying that the decision to be taken by the respondents on the representation to be preferred by the applicant would be communicated to him by way of a speaking order. It is obvious that

> we have not decided the Original Application on merits and it would be open to the applicant to buttress the grounds raised in the present Original Application in fresh proceedings, if required, against the speaking order to be passed."

5. In view of the aforesaid directions, the applicant was permitted to make a comprehensive representation espousing the plea taken in the OA within two weeks from the date of the order. The disciplinary authority was directed to decide the representation as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of the representation, and till disposal of the representation, further proceedings initiated vide memorandum dated 04.06.2010 were stayed. The disciplinary authority was further directed to communicate the decision by a speaking order. In furtherance to the aforesaid directions, the applicant made a representation on 25.11.2013. The main thrust of the applicant in the said representation was with regard to the wrong calculation of the assets of the applicant. He referred to his earlier service in the Ministry of Industry as Class-I officer since 1990 and various declarations made by him regarding his assets, including his share as a co-parcener in HUF, etc. He also relied upon note prepared by Shri R. C. Dhankar, then Under Secretary, Ad-V Section, CBEC, Department of Revenue, and his statement before the Special Court, CBI, Patiala as a prosecution witness, wherein he had mentioned about the bias of the DIG, CBI, and removal of the DIG

from the investigation of the case. This representation has been disposed of vide impugned order dated 18.02.2014.

6. Validity of the charge memorandum and the impugned order rejecting the representation of the applicant has been challenged by the applicant on the following grounds:

(1) That the departmental inquiry is based upon the investigation conducted by CBI, for which criminal proceedings had already been launched, wherein the check period for assessing the income and assets of the applicant has been taken into account w.e.f. 11.10.1992 when the applicant joined the Indian Revenue Service and not from 10.10.1990 when he had originally joined service in National Productivity Council, a Government of India undertaking as a Group 'A' officer, where he had clearly disclosed his assets.

(2) That the entire proceedings against the applicant are based upon bias of then DIG, CBI, Chandigarh, who initiated criminal proceedings and registered the FIR in a biased and *mala fide* manner, as one Satish Garg, a relative of DIG, R. K. Garg was tenant of the applicant's wife at Chandigarh, at whose instance the criminal proceedings were initiated against the applicant.

7. We have heard learned counsel for the parties.

8. Mr. A. K. Behera, learned counsel appearing for the applicant, has taken us to various documents on record in support of his contentions. It is stated that while the applicant was in service of National Productivity Council, he received various properties from his grandfather and also gifts by his family members from time to time, for which intimation was given to the then employer. Reference is made to letter dated 27.10.1990 written by the applicant to the Regional Director, NPC, New Delhi. Vide this letter, the applicant intimated that he had received a gift of Rs.2,80,000/- from his grandfather Shri Moti Lal Jain, who was engaged in the business of money lending. He further intimated that part of the gift would be utilized by him for payment of instalments of MIG house booked by him at Rajendranagar housing scheme announced by Ghaziabad Development Authority (GDA). Copy of the registration slip was also annexed with the said intimation showing payment of Rs.15020/- to the GDA. This is a printed receipt. Another document on record is a letter dated 04.10.1991, again addressed to the Regional Director, NPC, New Delhi, regarding a gift of Rs.57,300/- received by the applicant from his father Shri B. C. Jain, Advocate, and another amount of Rs.29,420/- from his mother Smt. Kanti Jain. These gifts were stated to be utilized towards payment of the MIG house allotted

to the applicant in Rajendranagar housing scheme of GDA. This is followed by another communication dated 21.01.1991 again addressed to the Regional Director, NPC, New Delhi. Vide this communication intimation was given to the then employer that grandfather of the applicant Shri Moti Lal Jain died on 06.01.1991, and as per his last will, the applicant may have interest in the property left by his grandfather, being a HUF member. The value of immoveable property comprising one house and shop and moveable property (jewellery etc.) was stated to be worth Rs.40 lakhs approximately. Copy of the will has also been placed on record accompanied with the valuation of the jewellery of Moti Lal Jain, made on 09.05.1988 with its assessment on the basis of valuation made on 31.03.1988.

9. Mr. Behera has further pointed out that the entire information to the erstwhile employer of the applicant was passed on to the Revenue Department (Customs & Excise) on the appointment of the applicant. Reference is made to letter dated 18.10.2011 (page 82 of the paper book) written by Administrative Officer, National Academy of Customs, Excise & Narcotics (NACEN) to Appraiser/ACPIO, NACEN, Faridabad. Vide this communication copies of documents pertaining to the earlier service of the applicant were forwarded. There is another order dated 12/13.04.1993 on

record written by Deputy Director (Admn.), NACEN addressed to Deputy Secretary, Ministry of Finance, Department of Revenue, intimating about the pay protection of the applicant on the basis of his previous service with National Productivity Council w.e.f. 10.10.1990. Mr. Behera has accordingly vehemently argued that the Department of Revenue was fully aware of the earlier service, income and assets of the applicant right from the date of his joining as Assistant Director in National Productivity Council on 10.10.1990, which *inter alia* included various intimations of the properties acquired by the applicant by way of gifts and through will. However, such income and properties have not been taken into consideration for purposes of assessing the income and assets of the applicant to find out whether the applicant possessed assets disproportionate to his known sources of income. His submission is that income and assets acquired by the applicant after joining the Revenue Service with effect from October, 1992 only have been taken into consideration, which has caused grave prejudice and harassment to the applicant.

10. Mr. Behera has further referred to the draft sanction order prepared by CBI. This draft sanction order was forwarded to the Director General (Vigilance), Central Board of Excise & Customs vide letter dated 20.10.2004 by Dy. Inspr. General of Police, CBI, RO,

Chandigarh. The draft sanction order (p.27 of paper book) contains following averments:

> "Whereas Sh. Amresh Jain joined National Productivity Council as Assistant Director on 10.10.1990 (FN) in the O/O Regional Director, National Productivity Council, Nehru Place, New Delhi in the pay-scale of 2200-75-2800-EB-100-4000 plus other allowances as admissible under National Productivity Council rules. He was entitled to draw an initial pay of Rs.2350/- at the time of his entry in the Central Govt. Service. He served in the said organization up to 07.10.1992 (AN).
>
> Whereas his total income earned by way of his salary during the aforesaid period while working with NPC, New Delhi was Rs.80,517/- and his total expenditure, i.e., payments made towards GDA Flat at Ghaziabad was Rs.1,00,970/- which exceeded his total income and as such his assets were nil at the time of joining the IRS. Hence the check period has been taken as 11.10.1992 to 27.02.2002."

Similarly, in the subsequent part of the draft order (p.29) the check period is fixed w.e.f. 11.10.1992 to 27.02.2002. Again at page 30 the net salary of the applicant taken into account is w.e.f. October, 1992 to January, 2002. The draft order also contains reference to the assets of the applicant's wife Smt. Sushma Jain amounting to Rs.51,66,149/-, and other properties in her name. Reference is also made to the properties/assets in the name of Ms. Pavni Jain, minor daughter of the applicant, giving details of various bank accounts and PPF account of the said minor daughter. Mr. Behera has thereafter referred to the actual sanction order dated 28.06.2005 (Annexure A-6),

which is nothing but adoption of the draft sanction order. Mr. Behera has accordingly submitted that since income and assets of the applicant prior to his joining the Customs & Excise Department have not been taken into consideration, the entire case against the applicant is a manipulation by CBI. His further contention is that assets of the minor daughter and the applicant's wife who had independent source of income, cannot be added towards the assets of the applicant. He has also referred to the charge memorandum dated 04.06.2010 wherein article of charge II mentions about the check period from 10.11.1992 to 27.02.2002.

11. While arguing on the question of non-application of mind by the disciplinary authority while issuing the charge-sheet and disposing of the representation of the applicant vide the impugned order, Mr. Behera has referred to para 1 of the representation dated 25.11.2013, which reads as under:

> "1. Prior to my appointment as an officer of the Indian Revenue Service (Customs & Central Excise) in 1992, I was in service with the Ministry of Industry as a Class I officer since 1990. At the time of my entry into that service, following the Conduct Rules, I filed declarations of my assets including my share as a co-parcener in HUF assets being a lineal descendent having right over the HUF Corpus. I owned and possessed wealth as coparcener in HUF and assets valued around 90 lacs in 1991 devolved on me. Accretion to such assets in a period of more than a decade resulted in value of Rs.3 crores by 21.02.2002. Consequent upon my appointment to the Indian Revenue Service under the Finance Ministry, the

> declarations were forwarded by that Ministry to the Department of Revenue, Ministry of Finance. The declarations so forwarded were received in the National Academy of Customs, Excise & Narcotics (NECEN), where I joined as a probationer. Subsequently, that record was forwarded by NACEMN to the Ad.II Section of the CBEC (the Board), Department of Revenue, Ministry of Finance, New Delhi by Dy. Director at NACEN. The aforesaid declarations of assets sent to the Ministry are very well available with the Department of Revenue under your Ministry. Such fact is verifiable from Annexure-2 to this prayer."

In this para, the applicant has referred to the valuation of his HUF assets and their market value in the year 2002, which fact has not been said to be taken into consideration. He has also referred to the notings obtained by him through RTI, which is the basis for passing the impugned order dated 18.02.2014 rejecting his representation. The applicant has placed on record the said notings (Annexure A-10), wherein in para 3 (p.177 of paper book), the averments in the representation of the applicant have been taken note of. In para 4 of the noting, reference is made to the documentary evidence brought on record by the applicant. Relevant extract of para 4 is reproduced hereunder:

> "4. The representation of Shri Amresh Jain has been examined in the light of records available in the Department and documentary evidence brought on record by Shri Amresh Jain, and the following facts emerge:
>
> (i) Prior to joining IRS (C&CE), Shri Amresh Jain was appointed as Assistant Director in the National

> Productivity Council vide order dated 20.12.1990 w.e.f. 10.10.1990 and was posted in their Regional Office at Delhi. On 27.10.1990 Shri Amresh Jain informed the Regional Director, NPC, New Delhi that he had received gift of Rs.2,80,000/- from his Grandfather Shri Moti Lal Jain who is engaged in business of money lending. He further stated that part of this gift will be utilized by him for payment of instalments of MIG house booked by him in Rajendra Nagar Housing Scheme announced by Ghaziabad Development Authority. Shri Amresh Jain vide his letter dated 21.01.1991, informed the Regional Director, NPC that his Grandfather Shri Moti Lal Jain had died on 06.01.1991. As per his will he had interest in the property left by him as a HUF Member. His Grandfather was engaged in the business of money lending and left behind immovable property (one house and shop) and movable property (jewellery etc. worth Rs.40 lakhs approx.). He on 04.10.1991 further informed that he had received gifts of Rs.57,300/- from his father Shri B. C. Jain, Advocate and Rs.29,420/- from his mother Smt. Kanti Jain, which are to be utilized towards payment of instalments of MIG house allotted to him in Rajendra Nagar Housing Scheme of GDA."

In para 5 reference is made to the directions of the Tribunal and the DOP&T memorandum No.11012/6/2007-Estt.A dated 01.08.2007, and the representation has been disposed of with the following observations:

> "6. Though the charges against Shri Amresh Jain are grave in nature, it is felt that there is no complicated question of law and fact involved justifying stay on the departmental proceedings. Moreover, sanction for prosecution of Shri Amresh Jain was given on 28/6/2005 and the case is under trial since then. The departmental proceedings were initiated against him only on 4/6/2010. Though the departmental

> proceedings were not kept in abeyance due to pendency of criminal case, considering the delay in finalization of criminal proceedings, the stay on the departmental proceedings initiated vide charge memorandum dated 4/6/2010, is not justified at this stage. The departmental proceedings afford an opportunity to Shri Amresh Jain to vindicate his stand. Since an inquiry officer has already been appointed to inquire into substance of imputations made against Shri Amresh Jain, it is open for Shri Jain to place all the facts and evidence in his defence before the Inquiry Officer.
>
> 7. Therefore, the representation of Shri Amresh Jain is liable to be rejected. The file is submitted for seeking orders of Chairperson, CBEC. A draft speaking order is also placed below for kind consideration and approval."

Based upon these notings, it is contended by Mr. Behera that the main contention of the applicant in his representation regarding his earlier service and the assets acquired by him during that period has not been taken into consideration at all while deciding the representation. He has further referred to the impugned order dated 18.02.2014, wherein reference is made to the representation of the applicant in the following manner:

> "And whereas, in his representation dated 25.11.2013 submitted in pursuance of CAT order dated 25.10.2013, Shri Amresh Jain has raised the following issues:
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> (1) Before joining the Indian Revenue Service (Customs & Central Excise) in 1992, he was in service in the National Productivity Council as Class I officer since 1990. As per declarations filed by him then, he owned and possessed wealth as coparcener in HUF and assets valued around 90 lakhs in 1991 devolved on him. Accretion to such

assets in a period of more than a decade resulted in value of Rs. 3 crores by 21.02.2002.

(2) Consequent upon his appointment to IRS (C&CE), the said declarations were forwarded by the National Productivity Council to the Department of Revenue, Ministry of Finance (NECEN, Faridabad and Ad.II Section of CBEC). The said declarations of assets were very well available with the Department of Revenue. However, while putting up the file on 19.05.2005 for sanction of prosecution and disciplinary proceedings, the Board had informed that assets owned by him were nil at the time of his joining IRS (C&CE) which is totally false and is suppression of facts available on record."

While disposing of the representation, the aforementioned contentions of the applicant have not been dealt with. It is accordingly argued by Mr. Behera that there has been total non-application of mind and deliberate omission to calculate the income and assets of the applicant during his previous employment so as to somehow make out a case of possession of disproportionate assets against him. It is accordingly contended that the entire exercise has been to fix the applicant in one way or the other, both in criminal case and disciplinary proceedings.

12. In the counter affidavit filed by the respondents, it is admitted that the check period for valuating assets of the applicant has been taken as 11.10.1992 to 27.02.2002 when the applicant was working as Assistant Commissioner/Deputy Commissioner, Customs & Central Excise. It is accordingly stated that the

disproportionate assets of the applicant have been worked out at Rs.1,55,09,518/- which are beyond his known sources of income. It is further stated that the assets of the applicant, both movable and immovable totally valued at Rs.177.92 lakhs, which were in his name, in the name of his wife Smt. Sushma Jain and Minor daughter Paavni Jain. Regarding his earlier service, it is stated that investigations revealed that total income earned by the applicant by way of his salary during the period 10.10.1990 to 07.12.1992 while working with National Productivity Council as Assistant Director was Rs.80,517/- and his total expenditure, i.e., payments made towards the GDA flat at Ghaziabad, was Rs.1,09,970/- which exceeded his total income, and his assets were nil at the time of joining the Indian Revenue Service. It is further stated that the applicant has declared his immovable property in his ITR dated 28.12.1998 as – (i) property under HUF at Rampur, UP, then valued at Rs.18-20 lakhs owned by his father Shri Bimal Chand Jain, acquired by way of inheritance; and (ii) MIG flat of GDA at Ghaziabad, UP, at the then value of Rs.2 lakhs. It is further stated that the applicant did not declare to his department the details of any other movable or immovable assets. It is then mentioned that CBI submitted its report dated 20.10.2004, which was examined in consultation with CVC, and accordingly the impugned charge memorandum dated 04.06.2010 was issued. While referring to the directions passed by the Tribunal in OA

No.3652/2012, it is stated that investigations revealed possession of disproportionate assets by the applicant. The respondents have also referred to the note dated 24.12.2013 wherein the factum of bias by then DIG, CBI, Chandigarh has been noticed, and it is stated that the said noting is on the basis of a complaint by the applicant, which was distorted.

13. The applicant has filed a rejoinder reiterating the averments made in the OA. He has, however, placed on record statement of Shri R. C. Dhankar, Under Secretary, Department of Revenue, Ministry of Finance, New Delhi (PW-1) recorded by the CBI Court in the criminal proceedings against the applicant on 22.12.2008. The said statement made following statement before the court:

> "...As per record brought by me, the previous service record of accused Amresh Jain had not been called for, by the sanctioning authority vide considering the aspect of grant of sanction for his prosecution. From the record brought by me, it is indicated that the previous service record of accused was available with our department with A.D.II Section of Department of Revenue, Ministry of Finance. That A.D.II section is part and parcel of our department. It is correct that as per record brought by me today a draft sanction order had been sent by the CBI to our department...."

The aforesaid witness also made the following statement:

> "...It is correct that as per noting, on the file by Minister of State (Revenue) dated 24.12.2003, it is mentioned at point B that 'bias of DIG CBI has been exposed and he has been shifted out of this investigation'..."

Based upon the aforesaid statement, Mr. Behera has further argued that while granting sanction for prosecution, relevant material has not been taken into consideration which was withheld by the investigating agency from the sanctioning authority on account of *mala fides* and bias of then DIG, CBI, whose bias is noticed by the authorities and he was removed from the investigation.

14. Rule 18 of the CCS (Conduct) Rules, 1964 deals with the obligation of a public servant to disclose the properties and assets owned/acquired/inherited by him. Relevant extract of rule 18 reads as under:

> "**18. Movable, immovable and valuable property**
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> (1) *(i)* Every Government servant shall on his first appointment to any service or post submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving the full particulars regarding –
>
> *(a)* the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;
>
> *(b)* shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him;
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> *(c)* other movable property inherited by him or similarly owned, acquired or held by him; and
>
> *(d)* debts and other liabilities incurred by him directly or indirectly.

> *(ii)* Every Government servant belonging to any service or holding any post included in Group 'A' and Group 'B' shall submit an annual return in such form as may be prescribed by the Government in this regard giving full particulars regarding the immovable property inherited by him or owned or acquired by him or held by him on lease or mortgage either in his own name or in the name of any member of his family or in the name of any other person."

The Government of India also issued circular No.327 dated 13.12.1967, which reads as under:

> "It has been decided that Current Accounts, Savings Bank Accounts and fixed deposits with Banks need not be reported by Government servants under Rule 18(3) of the CCS (Conduct) Rules, 1964. Such transactions will be covered by rule 18(1)(i)(b) of those Rules, as and when the form and the intervals mentioned in Rule 18(1) of those Rules are prescribed/ specified by the Government.
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> A question was also raised whether purchase of National Savings/Plan Certificates, Units of the Unit Trust of India, etc., which are investment of unspeculative nature involving practically no element of hazard, need at all be reported to the prescribed authority by the Government servant(s) making such investments. It has been held that the purchase of National Savings/Plan Certificates, Units of Unit Trust of India, etc., exceeding the monetary limits laid down in Rule 18(3) of the CCS (Conduct) rules, 1964, should be reported by the Government servant concerned to the prescribed authority, as such Certificates, Units, etc., are "securities" within the meaning of Explanation (1)(a) below Rule 18 of the CCS (Conduct) Rules, 1964."

15. Based upon the aforesaid provisions, it is further contended on behalf of the applicant that the assets of minor children and spouse of the public servant, having independent source of

income, cannot be taken into consideration, and thus it was not obligatory upon the applicant to give intimation regarding such assets/properties. The applicant was only obliged under the Conduct Rules to give intimation regarding properties and assets owned, acquired or inherited by him, which he did. However, even those assets have not been taken into account by the competent authority and the applicant has been treated unfairly, which calls for judicial intervention by this Tribunal even at the stage of charge-sheet.

16. Mr. Gyanendra Singh, learned counsel appearing for the respondents has, however, seriously contested the contentions of Mr. Behera. His submission is that the Tribunal, or for that matter, even the High Court, in exercise of power of judicial review does not sit over the action/decision of the administrative authorities as a court of appeal, and can only examine the manner and method of exercise of the power by the administrative or even a *quasi judicial* authority, and that unless exercise of such power is without authority of law, in contravention of the rules or applicable instructions, or there has been violation of principles of natural justice, or the action is actuated with *mala fides*, no interference is warranted. He has referred to the judgment of the Hon'ble Supreme Court in ***Union of India and others***

v ***Upendra Singh*** [(1994) 3 SCC 357]. Relevant paragraphs of the judgment are reproduced hereunder:

> "4. When the matter went back to the Tribunal, it went into the correctness of the charges on the basis of the material produced by the respondent and quashed the charges holding that the charges do not indicate any corrupt motive or any culpability on the part of the respondent. We must say, we are not a little surprised at the course adopted by the Tribunal. In its order dated September 10, 1992 this Court specifically drew attention to the observations in *A.N. Saxena* [(1992) 3 SCC 124] that the Tribunal ought not to interfere at an interlocutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to be produced at the inquiry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the inquiry officer appointed by him) and found that the charges are not true. It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view, as observed by this Court in *T.C. Basappa* v. *T. Nagappa* [(1955) 1 SCR 250 : AIR 1954 SC 440]. It was observed by Mukherjea, J. speaking for the Constitution Bench:
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> > "The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in

> the nature of 'habeas corpus, mandamus, quo warranto, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, *so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law*." (emphasis supplied)"

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal* v. *Gopi Nath & Sons* [1992 Supp (2) SCC 312]. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

> 7. *Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges*? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

17. Mr. Behera has, on the other hand, relied upon the judgment of the Apex Court in ***State of Punjab*** *v* ***V. K. Khanna and others*** [(2001) 2 SCC 330]. In this judgment, the Hon'ble Supreme Court examined the concept of fairness in administrative action, particularly in reference to the service matters. The Hon'ble Supreme Court observed as under:

"2. The concept of fairness in administrative action has been the subject-matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the court and no strait-jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness: And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed — it is the appreciation of this common man's perception in its proper perspective which would prompt the court to determine the situation as to whether the same is otherwise reasonable or not."

"5. Whereas fairness is synonymous with reasonableness — bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice (see in this context *Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant* [(2001) 1 SCC 182 : JT 2000 Supp (2) SC 206]). In almost all legal inquiries, "intention as distinguished from motive is the all-important factor" and in common parlance a malicious act stands equated with an intentional act without just cause or excuse. In the case of *Jones Bros. (Hunstanton) Ltd.* v. *Stevens* [(1955) 1 QB 275 : (1954) 3 All ER 677 (CA)] the Court of Appeal has stated upon reliance on the decision of *Lumley* v. *Gye* [(1853) 2 E&B 216 : 22 LJQB 463] as below:

> "For this purpose maliciously means no more than knowingly. This was distinctly laid down in *Lumley* v. *Gye* [(1853) 2 E&B 216 : 22 LJQB 463] where Crompton, J. said that it was clear law that a person who wrongfully and maliciously, or, which is the same thing, with

> notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service, commits a wrongful act for which he is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse: *Bromage* v. *Prosser* [(1825) 1 C&P 673 : 4 B&C 247] . 'Intentionally' refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as for instance to rebut a plea of privilege in defamation, malice in fact has to be proved."

While laying down the concept of bias and *mala fides* in common parlance and in law, the Hon'ble Supreme Court examined the scope of judicial interference at the stage of issuance of charge-sheet, and observed as under:

> "33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings."

18. From the law laid down in the aforesaid judgments, what emerges is that the court or tribunal while exercising the power of judicial review, particularly on the grounds of bias and *mala fides*, has to examine the facts and circumstances of the case. *Mala fides* or bias cannot be put in a straitjacket. Normally, it is the prerogative of the disciplinary authority to examine and delve upon all issues while initiating the disciplinary proceedings, depending upon the facts and material before it, and it is not open to the court or tribunal to venture into this area. However, the court or tribunal, where it is found on the basis of the material that the authority concerned is motivated by bias or *mala fides* apparent on record and is of the opinion that inquiry would be a mere farcical show and the conclusions are well known, interference would be justified even at the earliest stage so as to avoid any harassment or humiliation to the public servant. This is to protect due process of law, which is a safeguard prescribed for the protection of the public servant under Article 311 of the Constitution of India.

19. We have carefully examined the specific averments and material on record, reference to which has been made in detail hereinabove. From the analysis of the material before us as brought on record in the pleadings of the parties, the following facts appear to be unrebutted:

(a) The applicant had served in the Government owned organization, i.e., National Productivity Council, w.e.f. 10.10.1990 to October, 1992, and thereafter joined the Department of Revenue, Customs and Central Excise as Assistant Commissioner on being selected in the examination.

(b) During his service with the erstwhile employer, the applicant had intimated about the acquisition/inheritance of movable and immovable assets, and on joining the Revenue Department the factum of his earlier employment was duly acknowledged not only by taking on record service documents of his earlier employment, but also by granting him pay protection, vide order dated 12/13.04.1993.

(c) At the time of registration of the FIR the applicant's allegations against the DIG, CBI, R. K. Garg were not disputed.

(d) The criminal charge against the applicant for possessing disproportionate assets and the disciplinary proceedings based upon such investigation pertained to the income and assets of the applicant acquired during the period October, 1992 to February, 2002 when the FIR came to be

registered. Even though the salary of the applicant during his earlier employment was taken note of by the investigating agency, but there is no reference to the assets acquired by him during that period. This is evident from the order granting sanction for prosecution and other material on record, including the notings referred to hereinabove.

(e) The disciplinary authority has not considered the specific case of the applicant regarding acquisition of movable and immovable properties by him during his earlier employment duly communicated to authorities, while making calculations of the alleged disproportionate assets of the applicant. While rejecting the representation of the applicant vide impugned order dated 18.02.2014, the averments made by the applicant in his representation to this effect were noticed, but the same have not been dealt with.

20. At this stage, it may not be prudent to return any finding on the basis of alleged bias or *mala fide*, but there is sufficient material on record which has been ignored by the disciplinary authority while framing charge against the applicant. Despite directions of this Tribunal in OA No.3652/2012 to examine the representation, the

disciplinary authority has failed to consider the specific contention about the income and assets acquired by the applicant before joining the Indian Revenue Service, and the representation has been rejected in a routine and casual manner on the basis of record of investigation without looking into the material, i.e., the record produced by the applicant before the authorities pertaining to his earlier employment, including intimations regarding the assets acquired by him. It would not be out of context to say that the applicant has not been treated fairly by the disciplinary authority while framing the charge on account of non-consideration of the relevant material. Since the charge-sheet has already been filed by CBI in the criminal case and such proceedings being beyond the jurisdiction of this Tribunal, we do not want to delve upon that. It is for the criminal court to examine the issue on the basis of evidence before it. So far as the disciplinary proceedings are concerned, our observations are absolutely clear that the relevant material has not been considered by the disciplinary authority despite directions of the Tribunal. The impugned order dated 18.02.2014 is thus not sustainable in law and is liable to be quashed on two counts – *(i)* non-consideration of relevant material despite directions of the Tribunal, and *(ii)* absence of any independent application of mind on such material on record.

21. This OA is accordingly disposed of with the following directions:

Impugned order dated 18.02.2014 is hereby quashed. The matter is remitted back to the disciplinary authority to re-consider the representation dated 25.11.2013 by taking into consideration the specific averments of the applicant regarding his income and assets acquired by him during the period of his earlier employment with National Productivity Council, which *inter alia* includes the communications/information forwarded by him to the erstwhile employer regarding gifts received by him from his grandfather, including the property devolved upon him by will of his grandfather, and other properties, and the source of properties in the name of applicant's wife and minor daughter. For this purpose, the disciplinary authority will be at liberty to seek assistance of any officer or authority not associated with investigation of the case by CBI. On taking into consideration such material and examining the same, the disciplinary authority may pass appropriate order whether to initiate disciplinary proceedings against the applicant or not. Let this exercise be conducted within a period of four months. Till this exercise is completed and the disciplinary authority passes fresh reasoned and speaking order on the representation of the applicant,

pending disciplinary proceedings shall remain in abeyance. No costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/