Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1517/2015

Reserved on: 23.07.2016
Pronounced on:11.11.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Pavan Ved s/o Sh. Ratanlalji Ved,
R/o C-67, Neeti Bagh,
August Kranti Marg,
New Dehi – 110 049. ...Applicant

(By Advocate: Sh. Puneet Jain with Ms. Christi Jain for
Sh. Avneesh Garg)

Versus

1. Union of India through
Minister of Finance,
Government of India,
North Block, New Delhi.

2. Central Board of Direct Taxes,
Through its Chairman,
CBDT, North Block,
New Delhi. ...Respondents

(By Advocate: Ms. Madhurima Tatia)

O R D E R

By Dr. B.K. Sinha, Member (A)

The applicant in the instant Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 assails the Chargesheet dated 11.06.2014 related to his period of duty as Commissioner of Income Tax (Appeal) [hereinafter referred to as CIT (A)] i.e between the period

13.05.2003 and June, 2007. By means of the instant OA, the applicant has prayed for the following relief(s):-

> "*(a) Pass an order quashing the chargesheet dated 11.6.2014 Annexure P-1;*
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> *(b) Direct the respondent to release the retirement dues of the applicant forthwith with interest @ 18%;*
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> *(c) Award compensation to the applicant for harassment and for loss of opportunity to various positions for which the applicant has made application e.g. post of Member Income Tax Appellate Tribunal resulting in substantial financial loss to the applicant etc.*
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> *(d) Pass such other and further orders as this Hon'ble Tribunal may feel just and proper in the facts and circumstances of the present case.*
>
> *(e) Pending final decision on the application, the applicant seeks the following interim relief."*

2. The case of the applicant, in brief, is that he functioned as CIT (A) during the period from 13.05.2003 to June, 2007 and while functioning so, he passed orders in five appeals of the assessee, namely, (i) Naval Kishore Agrawal (ii) Bharat Gruh Nirman Shakari Samiti Maryadit (iii) Mohanlal Jain (iv) Ashirwad Agrico Products and Forestry Pvt. Ltd. and (v) Dhananjay Singh Parihar. A show cause was issued to the applicant for preliminary enquiry by DIT (Vig.), Mumbai in respect of afore mentioned five cases vide letter dated 30.08.2013 (Annexure-P2). On 08.10.2013, the applicant submitted a preliminary reply to the DIT (Vig.) denying all the charges. He had also stated that the burden of proving his *bona fide* or correctness of the decisions had shifted

upon his shoulders whereas it should have been first pointed out as to what points of his decisions were incorrect. The applicant further requested for the copies of the documents on the basis of which the preliminary show cause had been issued reserving his right to further reply which was finally made on 24.10.2013. The applicant in his detailed reply sought permission to inspect the report of assessing officers and other documents as the matter was fairly old one.

3. We take note of the fact that before issuance of the afore mentioned show cause, the applicant had been issued a chargesheet dated 13.09.2002 in relation to the assessments made by him while he had been posted as Joint Commissioner of Income Tax (JCIT) during the period from 1996 to 1998. The applicant subjected himself to the process of enquiry and was exonerated by the enquiry officer as none of the charges could be made out against him. It is the allegation of the applicant that the respondents set over the enquiry report for a period of approximately 8-9 years without taking any action while the tag of "vigilance pending" was attached to his name for all these years causing much harassment and agony to him. It is also contended that while the applicant was exonerated in the year 2004 itself by the enquiry officer, it was after a period of almost 9 years in

2013 that a show cause notice was issued to him as to why major penalty should not be imposed upon him. The applicant alleges that this was the time when his promotion as Chief Commissioner of Income Tax was due. The applicant challenged the said order proposing to impose major penalty upon him before this Tribunal vide OA No.4476/2013. The Tribunal vide order dated 17.01.2014 stayed the further proceedings and the OA continues to be pending before this Tribunal, by virtue of which, the applicant contends, the respondents were not allowed to deny the applicant to receive his retiral dues. For the sake of greater clarity, the interim order so passed in OA No.4476/2013, is being reproduced hereunder:-

> "*In view of the above position we stay the aforesaid memorandum and further proceedings until further orders. Since the applicant is retiring on 31.8.2014, the respondents shall file their reply within three weeks, and Applicant may file their Rejoinder if any within one week thereafter.*
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> ...
>
> *In the meantime, the respondents are at liberty to reconsider the issue and take appropriate action with regard to the aforesaid charge memorandum."*

4. The applicant further alleges that as the malice persisted against him, the respondents issued incomplete chargesheet on 11.06.2014 after a period of almost ten years that too without supplying certified copies of the documents and list of witnesses simply to deprive him of his retiral dues and to keep him engaged in a protracted legal battle. This is

the order which has been impugned by the applicant in the instant OA.

5. The applicant, in the first place, has adopted a number of grounds for his Original Application including the charge of delay of almost ten years. Here, the applicant has relied upon the following decisions of the Hon'ble Supreme Court:-

(i) *State of M.P. vs. Bani Singh [1990 Supp SCC 73];*

(ii) *State of A.P. vs. N. Radhakrishnan [1998 (4) SCC 154]*

(iii) *P.V. Mahadevan vs. Managing Director, T.N. Housing Board [(2005) 6 SCC 636].*

6. In the second place, the applicant has alleged that no *prima facie* case is made out from the chargesheet which is *ex facie* perverse. In respect to Article-I, the applicant submits that there were glaring factual errors because the matter as to whether VDIS Certificate was valid or not was pending before the Hon'ble High Court of Chhatisgarh and, hence, it was totally incorrect to assume that the said Certificate was invalid. The applicant has also relied upon a Circular of CBDT and the judgment of Hon'ble High Court of Bombay in *CIT vs. Vijaya Hirasa Kalamkar* [HUF 229 IT 772]. In respect to Article-II, it is submitted that the decision of the applicant had been upheld by the Income Tax Appellate Tribunal in appeal by the Department in IT (SS) A 72/Nagpur/2004 dated 12.10.2005. In respect of Article-III,

it is the submission of the applicant that the issue was related to pure question of law as to whether the assessment for the block period 1988-99 could have been reopened under Section 147 of the IT Act, 1961 and the applicant, relying upon the ITAT binding decision, decided the said issue holding that the assessment for the block period could not be reopened and, hence, annulled the assessment impugned before him. It is also submitted that the said decision of the applicant was upheld by the ITAT in a departmental appeal and then by the Hon'ble High Court of Chhatisgarh in the case of *ACIT Bhillai vs. Sunil Kumar Jain*, in TAX C/17/2011 decided on 15.01.2014. Insofar as Article-IV pertaining to the assessment of M/s. Ashirwad Agrico Products and Forestery Private Ltd. is concerned, the applicant submits that no record was supplied enabling him to submit his explanation and the chargesheet had been issued without considering the fact that the order passed by the applicant in favour of the assessee was accepted by the Department. In respect to Article-V, it is submitted that the order of the applicant has been upheld by the Hon'ble Appellate Tribunal in an appeal preferred by the Department in IT (SS) A/Nag/2005 dated 24.03.2006.

7. In the third place, the applicant alleges that the charges would have been approved by the President of India

whereas it does not appear that the matter had been placed before the Hon'ble Finance Minister. The applicant further submits that the chargesheet had been issued without due application of mind.

8. In the fourth place, it is submitted by the applicant that the charges have been framed in respect of quasi judicial functions discharged by the applicant without making a mention as to what portion of the orders passed by him was incorrect and how. The applicant, in support of his contention, has relied upon the decisions of Hon'ble Supreme Court in *Ramesh Chander Singh vs. High Court of Allahabad* [2007 (4) SCC 247]; *P.C. Joshi vs. State of U.P.* [2001 (6) SCC 491; *Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors.* [1999 (7) SCC 409]; and the decision of Hon'ble High Court of Delhi in *Union of India vs. Shri S. Rajguru* [WP(C) No.5113/2014 & CM No.10192/2014 decided on 13.08.2014].

9. In the fifth place, the applicant seeks protection of Section 293 of the I.T. Act which bars the jurisdiction of Civil Courts for any departmental proceedings for action performed in good faith. For the sake of better clarity, Section 293 of the Act *ibid* reads thus:-

> "*No suit shall be brought in any civil court to set aside or modify and proceedings taken order made under this Act; and no prosecution, suit or other proceeding shall*

> *lie against the government or any officer of the government for anything in good faith done or intended to be done under this Act."*

The applicant also alleges malafide against the timing of issuance of the impugned chargesheet and the contents thereof stating that the same is totally perverse.

10. The respondents have filed a counter affidavit and also written statement opposing the claim of the applicant set in the OA. The respondents in the written statement submit that issue of chargesheet does not cause any prejudice to the applicant. Here, the respondents have relied upon the following decisions:-

(i) *State of Punjab & Ors. v. Ajit Singh,* [1997 (11) SCC 368 (para 3)] ;

(ii) *Dy. Inspector General of Police v. K.S. Swaminathan* [1996 (11) SCC 498 (para 4)];

(iii) *Union of India & Anr. V. Kunisetty Satyanarayana* 2006 (12) SCC 28 (para 13)] ;

(iv) *Union of India & Anr. v. Ashok Kacker* [1995 Supp (1) SCC 180 (para 4)];

(v) *Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha* [2012 (11) SCC 565 (para 12)]

11. On the point of delay, the respondents submit that before issue of a chargesheet, a case has to pass through several stages including vetting by CVC which has consumed some time. Otherwise, there is no wilful or intentional delay on part of the respondents. Here, the respondents have

relied upon the decision of the Hon'ble Supreme Court in *Government of Andhra Pradesh & Os. Vs. Appala Swamy* [2007 (14) SCC 49] stating that no hard and fast rule can be laid down on ground of delay which must be adjudged individually on the merits of each case. The respondents have also relied upon the decision in *Union of India vs. K.K. Dhawan* [1993 (2) SCC 56] where the Hon'ble Supreme Court has held that departmental proceedings can be initiated against an officer qua his conduct in discharge of his judicial or quasi judicial duties overriding its decision in *Zunjarrao Bhikaji Nagarkar's* case (supra) and prescribed six acid tests for the same. The respondents have also relied upon the decision in *Union of India & Ors. Vs. Dulichand* [2006 (5) SCC 680] finding that *Zunjarrao Bhikaji Nagarkar's* case (supra) was contrary to the view expressed in K.K. Dhawan's case (supra) and the latter being a Larger Bench shall prevail over the former. It has also been submitted that in the decision in *Ramesh Chander Singh's case* (supra), the Hon'ble Supreme Court only referred to the decision in *Zunjarrao Bhikaji Nagarkar's* case (supra) but had not given any opinion regarding the correctness of the decision. The decisions in K.K. Dhawan's case (supra) and Dulichand's case (supra), had not been noted in Ramesh Chander Singh's case (supra).

12. Referring to the decision in *S. Rajguru's case* (supra), the respondents have submitted that the two cases are distinguished as in case of S. Rajguru the allegations are of irregularities committed by the charged officer whereas in case of the present applicant the allegation is of malafide intention and conferring undue benefit to the assessees. The respondents, however, fairly submitted that OA No.4476/2013 filed by the applicant in earlier point of time has been decided and the chargesheet has been quashed by this Tribunal vide order dated 22.05.2013. The respondents have, therefore, strongly pleaded that the chargesheet can only be cancelled on grounds of malafide, issued by an incompetent authority and/or no charge being made out which are not being getting attracted in the instant case. Therefore, the respondents have prayed for dismissal of the OA.

13. The applicant has filed a rejoinder in which he has practically reiterated the averments made in the OA. It has also been submitted that the reliance placed by the respondents in *Prabhash Chandra Mirdha's case* (supra) states that the courts/tribunals may quash a chargesheet after considering the gravity of the charge and all relevant factors including delay.

14. We have carefully gone through the pleadings of the rival parties as also the documents so adduced and the law citations relied on either side. We have patiently given our thoughtful consideration to the oral arguments advanced by the learned counsel representing their respective parties.

15. It is an admitted position that ordinarily petition for cancellation of a chargesheet is not to be entertained as the decision on a chargesheet requires lengthy process of leading evidence, examination and cross-examination of witnesses and proving of documents relied upon. Hence, quashing of chargesheet is a matter of exception and rather a rare exception. It has also been noted that the chargesheet can be quashed in case malafide, incompetent authority issuing the same and the charges not being made out as misconduct.

16. In the instant case the applicant has alleged malafide against the respondents citing example of a chargesheet submitted vide order dated 13.09.2002 in which the applicant had been exonerated by the enquiry officer and yet no decision was taken for a period of almost ten years. The applicant alleges that the respondents wanted to prevent his payment of retiral dues. However, we notice that no individual officer has been impleaded in personal capacity as private respondent so that he can appear and answer the

charges. The respondents, in their counter affidavit, have simply foiled the charge of malafide and submitted that their action was in the best of government interest.

17. We must start with the dictum that malafide is very easy to allege but it is difficult to prove. In the case of *Ravi Yashwant Bhoir versus District Collector Raigarh & Others* [2012 (4) SCC 407], the Hon'ble Supreme Court made a comprehensive view of its own earlier judgment and held as under:-

> *"47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice-in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.*
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> *48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207; Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors., (2005) 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745)."*

In the case of *State of Punjab & Ors. v. Gurdial Singh & Ors.* [1980 (2) SCC 471], the Hon'ble Supreme Court held as under:-

> *"9. The question then, is <u>what is mala fides in the jurisprudence of power?</u> Legal malice is gibberish*

unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act."

18. In the present case, though we certainly agree with the applicant's contention that the circumstances appear to be suspicious, yet malafide does not get established, as both the chargesheets may be co-incidental. Therefore, the charge of malafide is not getting established as per the requirement of law.

19. Insofar as the issue of delay is concerned, it is an established fact that due to passage of time memory fades and the person/employee may get prejudiced. We note that no decision could be taken against the applicant in respect of departmental enquiry which had been concluded in the year 2004 itself. The matter might have remained further inconclusive had not the Tribunal stayed in operation of the chargesheet in OA No.4476/2013 wherein it has been observed as under:-

> *"6. Whether the departmental proceeding initiated on the basis of the charge memo without the approval of the disciplinary authority can be held to be valid proceeding or not is no more res integra and is concluded by the decision in B. V. Gopinath (supra), wherein the Apex Court held that the charge sheet/charge memo having not been approved by the disciplinary authority would be non est in the eyes of law. Similar view was taken by a coordinate Bench of this Tribunal in Sunny Abraham (supra).*
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> *7. Therefore, it could be safely held that the whole proceeding initiated on the basis of the charge memo without obtaining the approval of the disciplinary authority cannot be allowed to stand and even after obtaining post facto approval will not cure the defect. The Apex Court in Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others JT 2011 (4) SC 252 held that the charge memo cannot be issued in a casual or routine manner and the disciplinary authority is required to apply his mind before its issuance. In the aforesaid case, their Lordships have referred to the legal maxim sub lato fundamento cadit opus and held that where initial action is not in consonance with law subsequent proceeding would not sanctify the same. Thus, we have no hesitation in holding that the entire proceeding stands vitiated as it was proceeded on the basis of the charge memo which was itself illegal in the absence of the approval of the disciplinary authority, and the subsequent approval could not cure the inherent defect. We, therefore, set aside the entire proceeding including the charge memo dated 13.09.2002, with the liberty to the respondents to proceed afresh in accordance with law, if so advised.*

> *8. At this stage, learned counsel for the applicant pointed out that though the applicant has retired in the month of August, 2014, but no retiral dues have been released nor his pension has been fixed by the respondents. We are of the view that this is a separate cause of action. However, we provide that it would be open to the applicant to make a detailed representation before the respondents in respect of payment of retiral dues and fixation of pension. We hope and trust that in the event such representation is made, the respondents shall consider to decide it and disburse the admissible amount payable towards retiral dues and also fix regular/provisional pension of the applicant expeditiously, preferably within a period of six weeks. However, in the event there would be any legal impediment, the respondents shall pass a reasoned order and communicate the same to the applicant."*

20. In the instant case also the delay cannot be denied for whatever reason that might have been. There is a gap of almost ten years between occurrence of the incident and issuance of chargesheet. It is generally agreed that there is no fixed formula or measurement yardstick vide which a delay could be established. However, in the case of *State of MP vs. Bani Singh* (supra), the Hon'ble Supreme Court has held as under:-

> *"4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of*

> *the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."*

It is also apt to extract the relevant portion from the decision in *Union of India & Anr. v. Kunisetty Satyanarayana's case* (supra), which reads as under:-

> *"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.*
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> *14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."*

In the case of *Ministry of Defence v. Prabhash Chandra Mirdha* (supra) the Hon'ble Supreme Court further held as under:-

> *"8. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of*

disciplinary proceedings or delay in concluding the proceedings, the court/ tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide: The State of Madhya Pradesh v. Bani Singh & Anr. [JT 1990 (2) SC 54 : AIR 1990 SC 1308]; State of Punjab & Ors. v. Chaman Lal Goyal [JT 1995 (2) SC 18 : 1995 (2) SCC 570]; Deputy Registrar, Cooperative Societies, Faizabad v. Sachindra Nath Pandey & Ors. [JT 1995 (2) SC 407 :1995 (3) SCC 134]; Union of India & Anr. v. Ashok Kacker [1995 (Suppl. 1) SCC 180]; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan [JT 1996 (3) SC 202 : 1996 (3) SCC 157]; State of Andhra Pradesh v. N. Radhakishan [JT 1998 (3) SC 123 : AIR 1998 SC 1833]: Food Corporation of India & Anr. v. V.P. Bhatia [JT 1998 (8) SC 16(2) : 1998 (9) SCC 131]; Additional Supdt. of Police v. T. Natarajan [JT 1998 (9) SC 257 : 1999 SCC (L&S) 646}; M.V. Bijlani v. Union of India & Ors. [JT 2006 (4) SC 469 : AIR 2006 SC 3475]; P.D. Agrawal v. State Bank of India & Ors. [JT 2006 (5) SC 235 : AIR 2006 SC 2064]; and Government of A.P. & Ors. v. V. Appala Swamy [2007 (14) SCC 49]).”

21. In view of the above pronouncements, it is established that the impact of delay upon the fate of the case has to be established under the circumstances of the present case. We find that an earlier chargesheet, whereby the respondents procrastinated over the departmental proceedings, concluded in favour and getting the matter pending, yet another chargesheet for major penalty was issued without providing a copy of the disagreement note to the applicant. Therefore, the Tribunal in OA No.4476/2013 had no option but to quash the chargesheet/show cause. We also find that whatever be the compulsion, the delay of ten years is little difficult to explain. We further find that the respondents are not prepared to abide by their own guidelines and rather

trying to rationalise the delay. Nowhere do we find any explanation forthcoming except for general statement. Therefore, the issue of delay sticks against the respondents.

22. Now, we come to the issue that which is a good law i.e. the law laid down in *Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors.*(supra) or in *K.K. Dhawan's case* (supra). The matter came up for consideration in *S. Rajguru's (supra)* wherein both the above decisions and decisions in *Ramesh Chander Singh vs. High Court of Allahabad* (supra) and *Union of India & Ors. Vs. Dulichand* had been noted down and the Hon'ble Court held as under:-

> *"28. The petitioner's contention that the tribunal erred in relying on the statement of law in Nagarkar (supra) as the law stated by the Supreme Court in that case is no longer good law, also cannot be accepted. In the case of Ramesh Chander Singh (supra) a Bench of three Judges of Supreme Court referred to the decision in the case of Nagarkar (supra) and held as under:-*
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> > *"17. In Zunjarrao Bhikaji Nagarkar v. Union of India [(1999) 7 SCC 409] this Court held that wrong exercise of jurisdiction by a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial*

> *officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level."*
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> *29. It is relevenat to note that the decision in Ramesh Chand Singh (supra) was delivered by a bench of three judges on 26.02.2007, is subsequent to the decision rendered by the Supreme Court in Duli Chand (supra).*
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> *30. It is also necessary to bear in mind that a CIT (Appeals), essentially has to decide the cases based on the contentions canvassed before him. Proceedings before a CIT (Appeals) are adversarial proceedings and are bound to be decided in favour of one or the other party. It is necessary to ensure that a CIT (Appeals) or any other quasi-judicial authority is not put under any pressure in discharging his functions. The idea that the Government could commence disciplinary proceedings if, the decisions were rendered against the department, would be pernicious to the effectiveness of the role that is required to be performed by the CIT (Appeals).*
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> *31. We concur with the reasoning of the Tribunal that a quasi-judicial authority is to act without fear and levelling charges which are based solely on the decisions rendered by the quasi-judicial authority would certainly instill fear in the minds of the officers and, thus, cannot be permitted."*

23. We would further like to add here that the decisions in *Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors.*(supra); *K.K. Dhawan's case* (supra) have not to be read in contradistinction but in harmony. It certainly holds good that a quasi judicial officer is required to decide cases in which the Government may also figure as a party and its decision may go against the Government. Hence, giving a wrong decision cannot be made subject matter to departmental proceedings unless it is established that the decision was *mala fide* in order to favour one of the parties. Here, again the dictum that malafide is easy to allege and difficult to prove will also apply against the Government.

24. In the instant case, we find that explanation given by the applicant in the tabular form reveals that out of his five decisions, three have been upheld by the higher judicial authority; in one the department has not chosen to appeal against; and the remaining one matter is still sub judice before the Hon'ble High Court. There is some substance in the assertion of the applicant that his view in the decision was a plausible view based upon circular issued by the CBDT as also the decisions of Hon'ble Bombay High Court.

25. We are not here to assess evidence as none has been forthcoming on the incorrect part of the judgment. However, on face of it, the facts appear to be correct as stated by the applicant. We also do not agree that the distinction which the respondents have sought to draw between the case of S. Rajguru (supra) and the case in hand. As already noted above, the charge in S. Rajguru's case was of having committed irregularities whereas the applicant in the present case has been charged with malafide to benefit the assessee which is a much higher form of irregularity. However, both were being proceeded against departmentally for the misconduct. If the judgment was good in irregularity, it would also be good in higher charges. Therefore, this distinction has been artificial drawn. What impresses us here is that the decision of the Hon'ble High Court in

S.Rajguru's case (supra) has noted some of the previous decisions on the subject and is very authoritarian in its tone, tenor and contents. It is obvious that the SLP filed against that case was dismissed by the Hon'ble Supreme Court in SLP No.33895/2014 decided on 16.01.2015.

26. In conclusion, we find that the delay is not adequately explained though the charge of malafide levelled by the applicant does not get substantiated to any extent. We also find that law laid down in *Zunjarrao Bhikaji Nagarkar v. Union of India & Ors.* (supra) is not bad law but has been supplemented by the decision in *K.K. Dhawan's case* (supra). In such cases where the quasi judicial officers have acted malafidedly, the entire situation has been summed up in S. Rajguru's case (supra) which is more akin to decision in *Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors.* (supra). We also agree with the assertion of the applicant that on face of it most of the decisions are explained either by way of approval of the superior courts or inability of the Government to file appeals. We are firmly of the opinion that independence of a judicial form whether be it a quasi judicial body is of absolute importance. If a quasi judiciary starts deciding all cases in favour of the Government then the very purpose of creating such fora would stand defeated. The proper course is to file appeal before the superior courts.

Having taken note of the decision in OA No.4476/2013, we have no hesitation at present to allow the instant OA except that the retiral dues to be paid to the applicant will carry interest @ 6% only and not 18%, as prayed for.

27. In the above terms, the instant OA stands allowed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/AhujA/