

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3015/2015

Order reserved on 5th September 2018

Order pronounced on 9th October 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S. N. Terdal, Member (J)

PC Khandelwal
s/o Sh. Bhagwan Dass
r/o N-36, C R Park
New Delhi – 110 019
(Aged about 68 years)
(ACIT Retd.)

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. Union of India through its Secretary
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi – 1
2. The Chief Commissioner of Income Tax (CCA)
CR Building, New Delhi

..Respondents

(Mr. Hanu Bhasker, Advocate)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief in the OA:

- “(a) Quash and set aside the impugned orders placed at Annexure A/1 and Annexure A/2 and further proceedings carried out against the applicant, with all consequential benefits.”

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant, at the relevant time, was working as Assistant Commissioner in Income Tax Department. He retired from the Government service, after rendering about 39 years of service, from the post of Assistant Commissioner and after his retirement, he was granted proforma promotion as Deputy Commissioner w.e.f. 01.01.2006.

2.2 On 31.05.2010, Annexure A-1 memorandum of charges under Rule 14 of the CCS (CCA) Rules, 1965 came to be issued to the applicant on the strength of sanction order under Rule 9 (2) of CCS (Pension) Rules, 1972 dated 31.05.2010 (Annexure A-2). The articles of charge read as under:

“Articles of charge framed against Shri P.C. Khandelwal, the then Assistant Commissioner of Income Tax, Central Circle-2, Delhi (since retired (IRS Civil Code No.01761)

That the said Shri P.C. Khandelwal, while functioning as the ACIT Circle-2, New Delhi during the period 2006-07 committed gross misconduct in finalizing the assessment orders in the case of M/s NIIT Ltd. He was required to pass the order of assessment in the search case of M/s. NIIT Ltd. for the assessment years 1999-2000 to 2004-05 u/s 153A and for the assessment year 2005-06 by Shri P.C. Khandelwal, the then ACIT, Central Circle-2, New Delhi. The scrutiny of assessment records bring out lapses both in the investigation of facts and the manner of completing the assessment. From perusal of the search assessment folders and the assessment orders of the aforesaid assessee, it is observed that the AO, Shri Khandelwal displayed gross negligence and carelessness in the performance of his duties by not conducting the required investigations during the search assessment proceedings and thereby did not ensure proper assessments in the case u/s. 153A of I.T. Act. The investigations conducted and reported in Appraisal report were not taken to the logical conclusion in the assessment order passed by Shri P.C. Khandelwal, rather the submissions given by the assessee were accepted on face value without properly rebutting with the seized material and the statements recorded during the search proceedings. Further, as the AO, Shri Khandelwal was deviating from the findings given in the Appraisal report, it was incumbent upon him to make a reference to the investigation wing before arriving at any

final conclusion on the issue in accordance with the Instruction no.286/57/2002-IT (Inv.II) of CBDT dated 3.07.2002. The search assessment was completed in negligent and perfunctory manner accepting the submissions of the assessee at face value, without ensuring a complete and thorough investigation and without utilising the material available on record, thereby grating undue benefit to the assessee.

Shri P.C. Khandelwal displayed gross negligence and carelessness in the performance of his duties while passing the orders of assessments for the assessment years 1999-2000 to 2004-05 u/s 153A and for the assessment year 2005-06 u/s 143 (3) of the I.T. Act.

By the aforesaid acts, Shri P.C. Khandelwal, the then Assistant Commissioner of Income Tax failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant and thereby contravened the provisions of Rules 3 (1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

2.3 The applicant submitted his reply to the charge-memo on 22.06.2010 (Annexure A-5) denying the charges.

2.4 Not satisfied with the representation of the applicant, the Disciplinary Authority (DA), namely President of India vide Annexure A-6 order dated 23.08.2010 ordered enquiry against the applicant, vis-a-vis, the charge-memo and also appointed Enquiry Officer (EO). The applicant has participated in the enquiry proceedings.

2.5 The applicant has challenged the Annexures A-1 and A-2 orders and has prayed for the reliefs, as indicated in paragraph (1) supra.

3. The applicant has pleaded the following important legal grounds in support of the relief claimed:

3.1 The DA has not recorded any reasons for initiating the DE proceedings against the applicant vide Annexure A-1 order dated 31.05.2010, which is a legal requirement.

3.2 The allegations against the applicant relate to his quasi-judicial functions under Sections 116 and 136 of the Income Tax Act, 1961. Hence, as per the law laid down by the Hon'ble Apex Court in **Zunjarao Bhikaji Nagarkar v. Union of India & Others**, [2000 (1) SLJ 291], no action can be taken against the applicant in regard to the allegations relating to his quasi-judicial functions.

3.3 The points raised by the applicant in his reply to the Annexure A-1 charge-memo have not been considered by the DA before passing the Annexure A-2 order.

3.4 The disciplinary proceedings have been started after a long gap of 03 years from the date of the alleged failure in performance of the duties by the applicant.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which the following important averments have been made:

4.1 The OA is barred by limitation in terms of Section 21 of the Administrative Tribunals Act, 1985. The OA has been filed in August, 2015, seeking quashment of the orders passed on 31.05.2010, i.e., after more than 05 years. No condonation Application has been filed, seeking condonation of delay.

4.2 This Hon'ble Tribunal as well as the Hon'ble Apex Court in a catena of judgments have held that there is limited scope of interference in quashing of the charge-sheet at the initial stage of the disciplinary proceedings. The important judgments are:

- i) **The Secretary, Ministry of Defence and Ors. v. Prabhash Chandra Mirdha**, (2012) 11 SCC 565;
- ii) **State of Uttar Pradesh v. Brahm Datt Sharma & Anr.**, (1987) 2 SCC 179;

4.3 In **Union of India & Others v. K.K. Dhawan**, (1993) 2 SCC 56, where the Hon'ble Apex Court has laid down the following six situations under which disciplinary proceedings can be initiated against the officers for their misconduct in the discharge of their quasi-judicial functions:

- “(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.”

4.4 The applicant while working as Assistant Commissioner (IT), Central Circle-2, New Delhi during the year 2006-07, had committed gross misconduct in finalizing the assessment orders in the case of M/s NIIT Ltd. for the years 1999-2000 to 2004-05. The scrutiny of records clearly established lapses both in the investigation of facts and the manner of completion of the assessment by the applicant. Hence, in terms of the ratio of Hon'ble Supreme Court in the case of **K.K. Dhawan**, (supra), the DA

was well within its power to initiate the disciplinary proceedings against the applicant.

5. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 05.09.2019. Arguments of Shri Ajesh Luthra, learned counsel for the applicant and that of Shri Hanu Bhasker, learned counsel for the respondents were heard.

6. Shri Ajesh Luthra, learned counsel for applicant submitted that the allegation against the applicant is that he did not pass the assessment orders with proper care, but there is no allegation of corruption, ulterior motive, etc. against the applicant. He vehemently argued that the applicant has passed the order in discharge of his function as quasi-judicial authority. In this regard, Shri Luthra drew our attention to Section 116 of Income Tax Act, 1971, which recognizes Assistant Commissioner of Income Tax also as a quasi-judicial authority.

7. Shri Luthra, particularly, drew our attention to the Annexure A-12 letter of the applicant dated 15.05.2006 to the Commissioner of Income Tax, Central – III, New Delhi, wherein the applicant had furnished full information in regard to the assessment of NIIT Group Companies covered under the complaint. He said that the applicant had also informed to the Commissioner of Income Tax that assessment under Section 153A of all the cases of NIIT Group was planned to be finalized by the end of the current month, i.e., May, 2006. He, thus, argued that the applicant had kept the Commissioner posted of the line of assessment being followed by the applicant.

8. Shri Luthra strenuously argued that the applicant cannot be subjected to any disciplinary proceedings for his action as quasi-judicial authority as per the ratio of law laid down by the Hon'ble Apex Court in **Zunjarrao Bhikaji Nagarkar** (supra). He particularly drew our attention to the observations of Hon'ble Apex Court in paragraphs 38, 40 and 41 of the judgment.

9. Shri Luthra further stated that this Tribunal has granted identical relief in the cases of **S Rajguru v. Union of India** (O.A. No.2815/2012) decided on 01.02.2013 and **Rajesh Kumar Bhardwaj (SDM) v. Govt. of NCTD & another** (O.A. No.1307/2015) decided on 05.04.2016. He also stated that the W.P. (C) No.5113/2014 & C.M. No.10192/2014, filed by the respondents against the Tribunal's order in **S Rajguru** (supra), has been dismissed by the Hon'ble High Court of Delhi vide judgment dated 13.08.2014.

10. *Per contra*, Shri Hanu Bhasker, learned counsel for respondents submitted that although the instant O.A. was filed in the year 2015, but the Tribunal chose not to grant any stay against the ongoing DE proceedings against the applicant. He stated that the applicant did not raise any objection at the time of appointment of EO and PO and had participated in the enquiry proceedings, and that at the stage of disagreement, he filed M.A. No.2179/2017 seeking stay against the departmental proceedings, which was allowed vide interlocutory order dated 23.06.2017. Shri Bhasker, thus, argued that if the applicant genuinely felt that the Annexure A-1 charge memo dated 31.05.2010 had been issued to him unjustifiably, he ought to have come to the Tribunal then and there. After having

participated in the enquiry proceedings, he cannot challenge the same at this stage, and such proceedings do not come within the scope of judicial review.

11. Mr. Bhasker further argued that the applicant retired from service on 31.07.2006 and the charge memo was issued to him on 31.05.2010, i.e., within a period of 4 years, and hence, the applicant cannot complain of unduly delay in starting the DE proceedings against him. He further submitted that the applicant would be having ample opportunities to represent to the DA regarding his stand that he cannot be subjected to DE proceedings for his discharge of quasi-judicial functions.

12. Mr. Bhasker vehemently argued that an officer discharging functions of a quasi-judicial authority can also be subjected to DE proceedings for his action in that capacity in terms of ratio laid down by the Apex Court in **K.K. Dhawan** (supra). He submitted that in paragraph 17 of the judgment of Hon'ble Apex Court in **Zunjarrao Bhikaji Nagarkar** (supra), the scope of judicial review has been clearly defined. His further argument was that **Zunjarrao Bhikaji Nagarkar** (supra) does not overrule the decision in **K.K. Dhawan** (supra), otherwise it would be *obiter dicta*. He also submitted that the judgment in **K.K. Dhawan** (supra) is of Three Judge Bench, whereas **Zunjarrao Bhikaji Nagarkar** is of Two Judge Bench, and hence **K.K. Dhawan** would prevail.

13. We have considered the arguments of learned counsel for the parties and have also perused the pleadings.

14. On the issue of delay, we find that the applicant in paragraphs 4.10 and 4.11 of the O.A. has stated that the PO submitted his brief in October, 2011 and thereafter no effective proceedings in the enquiry took place and it was only in April, 2015 that the applicant was telephonically informed by the EO to appear before him on 20.04.2015, and immediately thereafter, he approached this Tribunal in the instant O.A. This contention of the applicant has not been controverted by the respondents. Hence, we are of the view that the O.A. does not suffer with limitation.

15. The core controversy is as to whether the applicant can be subjected to DE proceedings for his action as a quasi-judicial authority in passing an assessment order, which, according to his superiors, was not proper. For deciding this issue, it will be fruitful to analyze the judgments of Hon'ble Apex Court on the issue. Two of the judgments, namely, **Zunjarrao Bhikaji Nagarkar** (supra) and **K.K. Dhawan** (supra) have been relied upon by learned counsel for applicant and learned counsel for respondents respectively. The other two judgments of Hon'ble Apex Court, on the issue, which we would like to discuss, are **Union of India & others v. Duli Chand**, (2006) 5 SCC 680 and **Ramesh Chander Singh v. High Court of Allahabad & another**, (2007) 4 SCC 247.

16. The judgment in **K.K. Dhawan** (supra) by a Three Judge Bench decided on 27.01.1993. The Hon'ble Apex Court in this case has held that the disciplinary proceedings could be initiated against a government servant with regard to exercise of judicial powers. The relevant paragraph 28 of the judgment is extracted below:-

“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 assessments 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."***

(emphasis supplied)

17. The judgment in **Zunjarrao Bhikaji Nagarkar** (supra) is by a Two Judge Bench decided on 06.08.1999. In this case, the Hon'ble Apex Court held that the disciplinary proceedings against an officer cannot take place on an information, which is vague or indefinite. Suspicion has no role to play in such matter. There must be reasonable basis for authority to proceed against the delinquent officer. Relevant paragraph 43 is extracted below:-

“43. 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, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.”

(emphasis supplied)

18. The judgment in **Duli Chand** (supra) is by a Three Judge Bench decided on 21.04.2006, wherein the Hon’ble Apex Court has endorsed its judgment in **K.K. Dhawan** (supra) and observed as under:-

“9. In our opinion, Nagarkar case was contrary to the view expressed in K.K. Dhawan case. The decision in K.K. Dhawan being that of a larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld. There will be no order as to costs.”

19. The judgment in **Ramesh Chander Singh** (supra) is by a Three Judge Bench decided on 26.02.2007, wherein the Hon’ble Apex Court observed as under:-

“11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should

have been actuated by malice, bias or illegality. The appellant-officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.”

20. After going through the aforementioned judgments of Hon’ble Apex Court, one would reach to a conclusion that there are no inherent contradictions in them and they have to be read in a harmonious manner. In **K.K. Dhawan’s** case (supra), the Hon’ble Apex Court has clearly held that the disciplinary proceedings can be initiated against a government officer even in regard to exercise of powers of quasi-judicial authority. In **Zunjarrao Bhikaji Nagarkar’s** case (supra), the Hon’ble Apex Court does not grant any immunity to a government official in his exercise of powers of quasi-judicial authority. It only says that for mere mistake of law, disciplinary action cannot be taken, but if there is “something more”, then such action can be taken against him. This would clearly indicate that in **Zunjarrao Bhikaji Nagarkar** (supra), the Hon’ble Apex Court has defined the conditions under which a government official, exercising powers of quasi-judicial authority, could be subjected to departmental proceedings. The Judgments of Hon’ble Apex Court in **Duli Chand** and **Ramesh Chander Singh** (supra) have also enunciated the same ratio broadly.

21. A harmonious reading of the aforementioned judgments of Hon’ble Apex Court leaves no doubt in my mind that a government official exercising powers of quasi-judicial authority cannot be subjected to

disciplinary proceedings for committing any mistake of law but if there is “something more”, then he can certainly be subjected to such proceedings.

22. From the afore discussed judgments of Hon’ble Apex Court, it is crystal clear that an officer discharging functions as judicial or quasi-judicial authority can also be subjected to DE proceedings if it is established that there was “something more” to the order passed by that officer in that capacity.

23. In the instant case, the applicant had passed assessment orders in regard to NIIT Group Companies. Apparently, his superiors felt that the assessment orders passed by the applicant in his capacity of Assistant Commissioner of Income Tax (Assessment Officer) are not proper and have earned loss to the exchequer. It is not in dispute that the applicant has passed order exercising his powers of quasi-judicial authority. His superiors, however, have found that the applicant has not passed the assessment order with due diligence and many crucial factors have not been taken into consideration by the applicant in passing the orders. In the other words, the superiors were not satisfied with the quality of the assessment orders. There is no allegation against the applicant with regard to any illegal gratification or ulterior motive. As such, “something more” is missing. The Department had the opportunity to challenge the assessment orders passed by the applicant before higher *fora* for rectification. In the absence of “something more” and relying on the judgments of Hon’ble Apex Court, discussed in paragraph 16 of this order, we are of the view that the respondents were not justified in subjecting the applicant to the DE proceedings.

24. In view of the discussions in the foregoing paragraphs, we quash and set aside the impugned Annexure A-1 charge memo dated 31.05.2010 and as a consequence thereof, all further proceedings also stand quash and set aside.

25. The O.A. stands allowed accordingly. No order as to costs.

(S N Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

/San-sunil/