

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.1400/2017

M.A. No.4421/2017

Reserved On:12.03.2018

Pronounced On:11.07.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Ms. Nita Chowdhury, Member (A)

B.K. Tripathi
S/o Shri H.N. Tripathi
R/O C-1/19, Bapa Nagar,
New Delhi-110003

Aged about 57 years
(IAS Officer)

... Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Union of India,
Through its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pension,
North Block,
New Delhi.
 2. State of Jharkhand
Through its Chief Secretary,
Project Building, Dhurwa,
Ranchi, Jharkhand-834004.
 3. The Secretary,
Department of Personnel, Administrative
Reforms and Raj Bhasha,
State of Jharkhand,
Project Building,
Dhurva,
Ranchi, Jharkhand-834004.
- ..Respondents

(By Advocate: Shri Hanu Bhaskar for respondent No.1
Shri Devashish Bharuka with Shri Ravi Bharuka for
Respondents No.2 and 3)

ORDER**By Mr. V. Ajay Kumar, Member (J)**

The applicant, a 1983 batch Indian Administrative Service (IAS) Officer of Jharkhand Cadre and presently working as Member Secretary, National Capital Region Planning Board, New Delhi, on deputation, filed the OA seeking quashing of the Annexure A-1 Charge Memorandum dated 09.03.2016 and the Annexure A-2 dated 17.03.2017, appointment of Enquiry Officer and the Presenting Officer in consequence to the Charge Memorandum.

2. The applicant worked as Principal Secretary, Human Resource Development Department, Jharkhand State from 18.07.2011 to 31.01.2013. Simultaneously, he was also in-charge of the post of State Project Director, Jharkhand Education Project Council (for short "JEPC") from 20.04.2012 to 10.10.2012 and from 12.11.2012 to 31.01.2013. The respondent-State of Jharkhand issued the impugned Charge Memorandum to the applicant alleging that he, while working as Principal Secretary, illegally passed orders/awards for release of amounts withheld/deducted to a total tune of Rs.7,92,33,899/- to various Printers/Suppliers of Text Books for free supply under the Sarva Shiksha Abhiyan Project of JEPC during 2007-08 to 2011-12. The charges and the details of imputations of misconduct and misbehaviour levelled against the

applicant vide the impugned Annexure A-1 Charge Memorandum dated 09.03.2016 are read as under:-

(As per the English translation filed by the respondents on 08.03.2018)

ARTICLES OF CHARGES

1. Irregularities made in the payment in the year 2012-13 of the deducted late fine charges from the printers as per the terms of the contract in course of printing and supply of free text books in different years under Sarva Shiksha Abhiyan of Jharkhand Education Project Council, Jharkhand, Ranchi.
2. As an Arbitrator, in violation of Arbitration and Conciliation Act, concluded the hearings of the proceedings of Arbitration in a single day without giving opportunity to both the parties to reply on the representation/submitted letter and evidences etc. put forth by both the parties. To conduct Arbitration proceeding without the request/notice of the Printers for the Arbitration, non-issuance of the information of the information of the scheduled date for arbitration from the Human Resource Development Department, non-availability of Receipt/acknowledgement, no receipt of written statement of both parties during hearing, no receipt of written statement of Jharkhand Education Project Council etc. and non-compliance of other processes duly required.
3. Jharkhand Education Project Council issued cheque to the Printers without any forwarding letter (containing details of all payments and unit wise deductions). Total liabilities of ₹ 7,92,33,899/- of the years 2007-08 to 2011-12 paid without approval of the Chief Secretary whereas the order of the Chief Secretary was taken on deductions of the amount, due to delay in supply of books.

Sd/-

(Suman Kumar)
Special Secretary to Government)

Details of Imputation of Misconduct and Misbehaviour

1. The above act of Shri B K Tripathi, IAS (JH: 83) is against the responsibilities and unbecoming of an officer of the All India Service and hence he has made himself liable for disciplinary action under the All India Service (Discipline and Appeal) Rules, 1969- Rule 8.
2. Shri Tripathi has violated Sections 12 (1), 12(2), 23 (1), 23(2), 24(2), 24(3), 18 and 23 of the Arbitration and

Conciliation Act, 1996. The procedure of Arbitration is unlawful.

3. After the order was passed in the Arbitration, Shri Tripathi without a clear provision and without the approval of the Chief Secretary allowed payment from the budget of financial year 2012-13 for the deductions made in 2007-08 to 2011-12 which is against financial provisions and administrative norms. Since the deductions due to delay had been made by the orders of the Chief Secretary, the payment was to be made only after the order/approval of the Chief Secretary”.

Sd/-

(Suman Kumar)
Special Secretary to Government)”

3. Heard Shri Ajesh Luthra, learned counsel for the applicant, Shri Hanu Bhaskar, learned counsel for respondent No.1-Union of India and Shri Devashish Bharuka with Shri Ravi Bharuka for respondents No.2 and 3, i.e., State of Jharkhand and perused the pleadings.

4. Shri Ajesh Luthra, learned counsel for the applicant in support of OA averments, submits as under:-

(i) The applicant was working as Principal Secretary, Human Resource Department, State of Jharkhand from 18.07.2011 to 31.01.2013 and as per Clause 11 of the agreements entered into between the State of Jharkhand with the Printers/Suppliers of Text Books, he was empowered/ authorised/appointed as the Arbitrator in respect of any of the disputes between the State Government of Jharkhand and the Printers/Suppliers of text books. Accordingly, the applicant passed the said awards/orders while discharging his functions as quasi judicial authority/Arbitrator under the provisions of The Arbitration and Conciliation Act, 1996. If, any

party including the State of Jharkhand is aggrieved by the awards/orders passed under Clause 11 of the contract, have a statutory remedy of making an application to a competent court for setting aside the arbitral award under Section 34 of The Arbitration and Conciliation Act, 1996. But the respondent-State of Jharkhand, having participated in the award proceedings before the applicant and having not sought for setting aside the awards, which were subject matter of the impugned Charge Memorandum against the applicant, till date, i.e., for the last about more than 5 years, cannot issue the impugned Charge Memorandum.

(ii) The applicant, in exercise of his powers as a quasi judicial authority/Arbitrator has not violated any of the provisions of law and that after receipt of the representations/applications submitted by the Printers/Suppliers of the text books under Sarva Shiksha Abhiyan of Jharkhand Government, Ranchi and after issuing notices to the JEPC and after hearing submissions of both the parties, i.e., the representatives of the JEPC and the Printers/Suppliers of text books, passed the awards/orders and hence the charge that the applicant concluded the entire arbitration proceedings in a single date and without giving opportunity to submit their replies/representations and to put forth evidence etc. is incorrect and against the record.

(iii) The applicant has not violated any of the provisions of The Arbitration and Conciliation Act, 1996 and on the other hand,

applicant acted in terms of such provisions only and that if any party to the award, aggrieved with the same for any reason, can make an application for setting aside the award under Section 34 of the Act and hence issuance of the Charge Memorandum against the applicant is without power, jurisdiction or authority.

(iv) None of the charges levelled against the applicant allege that the applicant's actions are actuated by corrupt motive or that he acted in order to unduly favour a party, and in the absence of the same, the impugned Charge Memorandum is liable to be quashed as the alleged action of the applicant was admittedly in discharge of his quasi judicial functions.

(v) With regard to the third charge that the amount payable under the orders/awards passed by the applicant were paid by the applicant himself without prior approval of the Chief Secretary is unsustainable as already financial powers under the JEPC were delegated from the Chief Secretary-cum-Chairman, State Executive Committee to the Principal Secretary, Human Resource Development Department during September, 2012 itself vide the minutes of 30th meeting of the State Executive Committee, JEPC (Annexure A/6).

(vi) The contention of the respondents that since the deductions for delay of supply of text books was made under the orders of the Chief Secretary, the payments, if any, was also to be made only after the order or approval of the Chief Secretary, but not by the

applicant in his capacity as a Principal Secretary of the Human Resource Development Department, is unsustainable as the orders for deductions were made prior to 21.09.2012, i.e. delegation of powers to the applicant and whereas the payments were made subsequent to the delegation of powers in favour of the Principal Secretary, Human Resource Development Department.

5. Per contra, Shri Devashish Bharuka, learned counsel appearing for the State of Jharkhand would submit as under:-

(i) The applicant without submitting any reply to the impugned Charge Memorandum approached this Tribunal and hence the OA is liable to be dismissed.

(ii) As per the settled principles of law, no OA is maintainable at the stage of charge sheet/show cause notice and that the Tribunal would not interfere at this stage in exercise of its power of judicial review.

(iii) There is no bar in initiating disciplinary proceedings against an officer discharging quasi judicial functions, provided where the officer acted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty; or if there is a prima facie material to show recklessness or misconduct; or if the officer acted in a manner unbecoming of a Government servant or if acted negligently or omitted the prescribed conditions which are essential for the exercise of the statutory powers; or if acted in order to unduly favour a party or if he had been actuated by corrupt motive.

Since the applicant's action falls well within the aforesaid exceptions, there is no illegality in issuing the Charge Memorandum and proceeding in pursuance thereof by way of departmental enquiry against the applicant.

(iv) The applicant passed the orders without following the provisions of law in favour of various Printers/Suppliers of Text Books from the bills of whom certain amounts were deducted due to the delay in supply of books in the years 2007-08 to 2011-12 and made payments amounting to the total tune of Rs.7,92,33,899/- during January, 2013, i.e., just before few days of his transfer from the post of Principal Secretary, Ministry of Human Resource Development Department.

(v) In pursuance of a Notification of the Government a Three Member Committee was constituted to submit report regarding the said illegal action of the applicant and the said Three Member Committee vide its report dated 11.12.2015 (Annexure R-3/1), stated that provisions of the Act have not been followed by the applicant and on the basis of the said report, the impugned Charge Memorandum was issued under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969.

6. Both the counsels placed reliance on various decisions as detailed herein under, in support of their respective submissions.

7. In the backdrop of the above referred rival submissions, the following issues emerged for our consideration:-

(i) Whether the applicant, by virtue of his posting as Principal Secretary to Ministry of Human Resource Development Department, State of Jharkhand from 18.07.2011 to 31.01.2013 was also authorised/empowered/deemed to have been appointed as Arbitrator to discharge the functions of a quasi judicial authority in respect of any dispute between the Printers/Suppliers and the State of Jharkhand in terms of Clause/Para 11 of the contract?

(ii) If the applicant was authorized to act as an Arbitrator to pass orders/awards and if any of his awards/orders passed in exercise of such quasi judicial powers, are against his employers, i.e., State of Jharkhand, is he liable for proceeding under the IAS (Discipline & Appeal) Rules, 1969, though there is a statutory provision for filing an appeal against the said awards/orders, and without there being any specific allegation or charge of mala fide intention/wrongful personal gains to him?

(iii) Whether a party to an order/award can justify disciplinary action against a quasi judicial authority without even filing any statutory application for setting aside the said order/award, though available as per law?

8. To answer these issues, it is necessary to note the paragraphs/clauses of the tender documents executed between the State of Jharkhand and the Printers/Suppliers of text books which

is the subject matter of the impugned Charge Memorandum and the same are as under:-

(as extracted from the documents filed by the respondents)

“ix. For disposal of disputes relating to tender documents, Para 11(a) of Section IV provides as under:-

“In case of Dispute or difference arising between the Copyright Holder and a Printer relating to any matter arising out of or connected with this agreement or contract, such disputed or difference shall be sorted out at the level of State Project Director, JEPC and Printers. If the dispute persists to remain unsolved then it will be entertained, heard and finalized as per provision of the Arbitration and Conciliation Act, 1996 subject to clause 24.2” (The aforesaid provisions is present in the NIT of the year 2007-08 and in the NIT of 2008-09, 2010-11 and 2011-12, it is mentioned as “Subject to clause 24.2”).

The Arbitrator will be the Principal Secretary, Human Resource Development, Government of Jharkhand Ranchi (In NIT of 2007-08) Secretary, Human Resource Development, Government of Jharkhand, Ranchi (In NIT of 2008-09)/Secretary, Human Resource Development and Government of Jharkhand Ranchi (NIT of 2010-11 and 2011012).

XXX

XXX

XXX

x. Para 24 of the Tender Document at Section-III Settlement of Disputes reads as under:-

24.1 The Copyright Holder and the Printer shall make every effort to resolve amicably by direct informal negotiation for any disagreement or dispute arising between them under or in connection with the contract.

24.2 If, after thirty (30) days, the parties have failed to resolve the dispute or difference by such mutual consultation, then either the JEPC or the Printer may given notice to the other party of its intention to commence arbitration, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

24.2.1 Any dispute or difference, in respect of which a notice of intention to commence arbitration has been given in accordance with this clause, shall be finally settled by

arbitration. Arbitration may be commenced prior to or after delivery of the Text Books under the contract.

24.2.2 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC Clause 11.

24.3 Notwithstanding any reference to arbitration herein the parties shall continue to perform their respective obligations under the contract unless they otherwise agree.

XXX XXX XXX

27.1 Any notice given by one party to the other pursuant to this contract shall be sent to other party in writing to the other party's address specified in Clause 27.3.

27.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

27.3 For the purpose of all notices, the following shall be the address of the Copyright Holder and Printer.

Copyright Holder:-

State Project Director, Jharkhand Education Project Council, New Co-operative Building, Shyamli Colony, Doranda, Ranchi-834024.

Printer: (To be filled by the bidder)".

9. It is the case of both sides that as per para 11 of the tender documents, if any dispute persists, the same shall be decided as per the provisions of The Arbitration and Conciliation Act, 1996 and the Arbitrator will be the Principal Secretary, Human Resource Development Department, Government of Jharkahnd. It is also the case of both sides that the applicant was working as a Principal Secretary, Human Resource Development Department, Jharkhand from 18.07.2011 to 31.01.2013, i.e., during the period under which he acted as an Arbitrator and passed the awards/orders in discharge of his quasi judicial functions. Therefore, the vague contention of the respondents that as the applicant was not

authorised to act as an Arbitrator, he was not empowered to pass the said awards/orders cannot be accepted.

10. Now it is to be seen whether the applicant while discharging his quasi judicial functions as an Arbitrator acted in terms of The Arbitration and Conciliation Act, 1996.

11. As per the directions of the Tribunal, the respondents filed a table showing the Printer-wise details and also the copies of the documents pertaining to two of such Printers, namely, M/s Pitambra Books Private Ltd., Jhansi and M/s Anand Publication, Jalgaon. A perusal of the same indicates that the withholding /deductions of certain amounts from the bills of the Printers/Suppliers of text books under Sarva Shiksha Abhiyan of JEPC pertains to the years 2007-08 to 2011-12. In case of M/s Pitambra Books Pvt. Ltd., Jhansi, being first in time, the year of the book printing was 2007-08 and date of final payment was on 17.03.2008 and whereas a representation/application was made by them for releasing of withheld amounts on 14.12.2012, i.e., after a lapse of more than 4 years. In case of M/s Anand Publication, Jalgaon, being last but one in time, the year of book printing was 2011-12 and the final payment was made on 02.05.2012 and the date of representation for release of withheld amount was 26.12.2012. In this case, the application for release of withheld amount was made within 7 months. The hearing of the cases of the Printers/Suppliers was either on 10.01.2013 or 12.01.2013 and the

orders/awards were passed during 16.01.2013 to 19.01.2013 in respect of all the 9 Printers and the said Awards were complied with by paying the amounts under the awards on the same date, i.e. the date of awards/orders itself. The documents pertaining to the release of withheld amounts and the passing of the awards by the applicant indicate that notices were served on the Principal Secretary, Human Resource Development Department-cum-State Project Director, JPEC and they submitted their replies thereto while seeking to fix the date of hearing of the arbitration and on the date of hearing, the representatives of both the parties, i.e., JEPC and all the Printers were present and thereafter respective awards/orders were passed wherein the contentions of the Printers and the JEPC were also mentioned. No doubt that sequence of dates of these events indicate that entire thing was done hurriedly. But at the same time, it cannot be said that no opportunity at all was given to the JEPC, or no notice was given to them, or no person was present for hearing on their behalf or that their contentions were not considered by the applicant while discharging his quasi judicial functions as an Arbitrator. Nothing prevented the respondent-State of Jharkhand from filing an application under Section 34 of the Arbitration and Conciliation Act, 1996, against the awards before the appropriate forum, if they were advised that the awards/orders of the applicant were cryptic or non-speaking or some or any of their contentions were not considered before passing

the awards or for any other reason, which they deem valid. To one of our queries, the learned counsel appearing for the State of Jharkhand, on instructions, submits that they have not chosen to prefer any application for setting aside the awards even as on the date of closing of the arguments in the instant OA. The said action of the respondents indicates and implies that even as on today, in their opinion, there are no grounds to file an application for setting aside the said awards/orders.

12. The final opinion of the Three Member Committee comprising Development Commissioner, Principal Secretary, Department of Planning-cum-Finance and Secretary, Personnel, Administrative Reform and Rajbhasha Department, in pursuance to which, the Charge Memorandum was issued read as under:-

“9. Opinion of the Committee –

The situation that had emerged after reviewing/examining the evidences on record, the reaction given by Sri B.K. Tripathi and the discussion/deliberations with the then Secretary, School Education and Literacy Mission Department, Government of Jharkhand and State Project Director, has been discussed in the foregoing paragraphs. Keeping in view the aforementioned points, the opinion of the Committee is as under:-

1. Deficiencies/Drawbacks on the part of the Department and office of Education Project are visible on the points like coordination with Printers/publishers during printing, observation of their work, solving their difficulties, execution of matters in file, timely communication of decisions, etc.

2. The method of payment by cheques to the Printers by the Jharkhand Education Project, without any forwarding letter (Which includes reasons for the payment along with the deductions), will not be said to be beyond doubt.

3. Lack of expected action has been noticed on the part of Printers in the direction of initiating any action for resolving their difficulties during printing or thereafter for seeking any rebate therein by contacting any competent authority, as per the provisions of Tender. Besides, the last

letter/representation that has been referred in the Arbitration Order cannot be said to be in accordance with specified conditions for arbitration.

4. Lack of proper action in respect of arbitration decision, its communications, operation and compliance therein has clearly been reflected. The proceedings of the Arbitration by then Principal Secretary-cum SPD was contrary to the rules, was partial. Thus, this Arbitration cannot be said to be lawful.

5. Submission of letters/representations by different Printers within same time-period seeking arbitration in their matters immediate after a mere decision taken by the State Working Committee in its meeting dated 12.9.2012 thereby increasing the financial power of Principal Secretary; conducting Arbitration on the applications of Printers without any delay; completing the entire arbitration proceedings in one day in a number of cases; passing arbitration order and its compliance the same day makes the entire matter doubtful.

6. In some cases, it has been found that the amount refunded to the Printers by means of the arbitration order was in excess of the actual amount deducted on account of delay in supply of books. Therefore, it is essential and would be advisable that the School Education and Literacy Department may be instructed to conduct inquiry/investigation into this matter separately and take action accordingly.

7. Making payment to Printers from the allocated budget of 2012-13 pursuant to the arbitration order (Without any separate budget provision, that too, without obtaining approval from Chief Secretary) is gross violation of the financial rules and principles of administrative decorum.

8. Para 11(b) of Section-IV in the Tender Document, it is clearly provided that "The decision of the arbitrator shall be final and binding upon both the parties" and the Administrative Officer, in his letters issued by him to the Printers for communicating the date of hearing to them that "The decision of the arbitrator shall be final". It is also evident that compliance of the so-called arbitration order was done and payments were released to the Printers the same day when such orders were passed. Now, in such a situation, it is advisable that, in order to recover the appropriate amount from the Printers, especially after such a long period has elapsed, the Department of Administrative Affairs should examine the ways and means within – the provisions of Arbitration and Conciliation Act, 1996 and ensure further necessary action in this direction after seeking legal opinion from the Law Department".

13. Even the above referred Three Member Committee in pursuance of which the impugned Charge Memorandum has been

issued, nowhere finally opined that the applicant while discharging his quasi judicial functions as an Arbitrator acted with any mala fide intention or for wrongful personal gains. It is also relevant to note that the Three Member Committee finally advised the State of Jharkhand to examine the ways and means within the provisions of The Arbitration and Conciliation Act, 1996, whereunder a provision for filing application for setting aside arbitral award in an appropriate court of law was provided. But the respondent-State of Jharkhand, failed to implement the main recommendation of the Three Member Committee, i.e. to invoke the provisions of The Arbitration and Conciliation Act, 1996.

14. In **Union of India & Others Vs. K.K. Dhawan** (1993) 2 SCC 56, the respondent while functioning as Income Tax Officer, completed 9 assessments during 1982-1983. The appellant-Union of India issued a Charge Memorandum dated 02.05.1989 to the respondent therein alleging that he completed the said assessments in an irregular manner, in undue haste and apparently with a view to confer undue favour upon the assesseees concerned and by the said acts, the respondent failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant, thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. A three Judge Bench of the Hon'ble Apex Court answered the issue involved as under:-

“16. The question, therefore, arises whether an authority enjoys immunity from disciplinary proceedings with respect to matters decided by him in exercise of quasi-judicial functions?”

After considering the decisions in **Union of India Vs. A.N. Saxena (1992) 3 SCC 124**; **S. Govinda Menon Vs. Union of India, AIR 1967 SC 1274**; **Thayre Vs. London, Brighton and South Coast Railway Company, 22 TLR 240**; and **Thompson Vs. British Berna Motor Lorries Ltd., 33 TLR 187**, it was held as under:-

“25. The above extract will clearly indicate that if there was any culpability or any allegation of taking bribe or trying to favour any party in exercise of quasi-judicial functions, then disciplinary action could be taken. We find our conclusion is supported by a following observations found in the said order at page 3:

"In our view, the allegations are merely to the effect that the refunds were granted to unauthorised instructions (sic) of the Central Board of Direct Taxes. There is no allegation, however, either express or implied that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous considerations. In these circumstances, merely because made, even such orders refunds were assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent discharging quasi-judicial function. If any erroneous order had been passed by him the correct remedy is by way of an appeal or revision to have such orders set aside.

XXX

XXX

XXX

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 good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which Are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault

is great."

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

15. In **Government of T.N. Vs. K.N. Ramamurthy, (1997) 7 SCC 101**, the respondent was working as a Deputy Commercial Tax Officer. A charge sheet was issued to him alleging that he failed to analyse the facts involved in each and every case referred to him, he failed to check the accounts deeply and thoroughly while making final assessment, he failed to subject the turnover to tax originally and he failed to safeguard Government revenue to a huge extent of Rs.44,850/-. After an enquiry wherein the charges were proved, a punishment of stoppage of increment for 3 years with cumulative effect was imposed. Questioning the same, he filed an OA before the Tamil Nadu Administrative Tribunal, which allowed the OA. After considering **A.N. Saxena** (supra), **K.K. Dhawan** (supra) and **Union of India Vs. Upendra Singh**, (1994) 3 SCC 357, the Hon'ble Apex Court allowed the appeal.

16. In **Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others**, (1997) 7 SCC 409, the appellant a Collector of Central Excise was served with a Memorandum of Charges that he favoured an assessee by not imposing penalty on it under Rule 173Q of the Central Excise Rules, 1944 when he passed an order in Original No.20/95 dated 02.03.1995 holding that the assessee had clandestinely manufactured and cleared the excisable goods wilfully

and evaded the excise duty and had ordered confiscation of the goods. The appellant challenged the initiation of disciplinary proceedings by issuing the Charge Memorandum. This decision was by a two Judge Bench of the Hon'ble Apex Court. The Apex Court, after detailing the facts of the case and after considering the decisions in **K.K. Dhawan** (supra), **Upendra Singh** (supra), **K.N. Ramamurthy** (supra), **A.N. Saxena** (supra) and certain other decisions, held as under:-

"40. When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable negligence. This is how this Court in *State of Punjab v. Ram Singh Ex-Constable* ((1992) 4 SCC 54) : (1992 AIR SCW 2595 : AIR 1992 SC 2188) interpreted "misconduct" not coming within the purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of *K. K. Dhawan* (1993 (2) SCC 56) : (1993 AIR SCW 1361 : AIR 1993 SC 1478 : 1993 Lab IC 1028), the allegation was of conferring undue favour upon the assessee. It was not a case of negligence as such. In *Upendra Singh's* case (1994 (3) SCC 357) : (1994 AIR SCW 2777), the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of *K. S. Swaminathan* (1996 (11) SCC 498), was not where the respondent was acting in any quasi judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether they support the charge of the alleged misconduct. In *M. S. Bindra's* case (1998 (7) SCC 310) : (1998 AIR SCW 2918 : AIR 1998 SC 3058 : 1998 Lab IC 3491) where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of *Madan Mohan Choudhary* (1999) 3 SCC 396 : (1999 AIR SCW 648 : AIR 1999 SC 1018), which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In *K. N. Ramamurthy's* case (1997) 7 SCC 101 : (1997 AIR SCW 3677 : AIR 1997 SC 3571), it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In *Hindustan Steel Ltd.'s* case (AIR 1970 SC 253), it was said that where proceedings are quasi judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on his part but he said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Section 325, I.P.C. held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of 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 exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

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.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed”.

17. In **Union of India and Others Vs. Duli Chand**, (2006) 5 SCC 680, the respondent had been punished by the disciplinary authority on the ground that he had negligently allowed claims for refund to the applicant on three different occasions. A three Judge Bench of the Hon'ble Apex Court, after considering the decisions in **K.K. Dhawan** (supra), **K.N. Ramamurthy** (supra) and **Zunjarrao Bhikaji Nagarkar** (supra) held that the decision in **Nagarkar's case**

(supra) does not correctly represent the law and the relevant paragraphs read as under:-

“6. The Court, however, made it clear that ultimately the matter would have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above.

7. The decision in K.K. Dhawan case((1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24 ATC 1) was considered by this Court and followed in Govt. of T.N. v. KN. Ramamurthy((1997) 7 SCC 101 : 1997 SCC (L&S) 1749). In that case the Tribunal had set aside the order imposing punishment on an officer who had been discharging judicial functions. The Court was of the view that the Tribunal's action was contrary to the several judgments of this Court and the settled law on the question.

8. In 1999 another Bench of two Judges in Zunjarrao Bhikaji Nagarkar((1999) 7 SCC 409 : 1999 SCC (L&S) 1299) considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the assessee to whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge-sheet to the charged officer.

9. In our opinion, Nagarkar case((1999) 7 SCC 409 : 1999 SCC (L&S) 1299) was contrary to the view expressed in K.K. Dhawan case((1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24 ATC 1). The decision in K.K. Dhawan((1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24 ATC 1) being that of a larger Bench would prevail. The decision in Nagarkar case((1999) 7 SCC 409 : 1999 SCC (L&S) 1299) 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((1999) 7 SCC 409 : 1999 SCC (L&S) 1299) 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.

18. In **Ramesh Chander Singh Vs. High Court of Allahabad and Another**, (2007) 4 SCC 247, the appellant, a judicial officer was imposed with a major punishment for charges of not granting bail in utter disregard of judicial norms and on insufficient grounds and based on extraneous consideration with oblique motive. A three Judge Bench of the Hon'ble Supreme Court after considering various decisions including **Zunjarrao Bhikaji Nagarkar** (supra), while disposing of the appeal by setting aside the lower Court's order, 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.

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, High Court must take extra care and caution”.

19. Shri Ajesh Luthra, learned counsel appearing for the applicant placing heavy reliance on the decisions of **Nagarkar** (supra) and **Ramesh Chader Singh** (supra), submits that the applicant was discharging functions as a quasi judicial authority and if in the opinion of the respondents, the orders passed by him were not in accordance with law, the same can be corrected by filing an application under Section 34 of The Arbitration & Conciliation Act, 1996 and that there was no allegation of any bribe or extraneous consideration influencing the quasi judicial order and hence no disciplinary proceedings is maintainable against a quasi judicial authority and accordingly, the OA is liable to be allowed.

20. On the other hand, Shri Devashish Bharuka, learned counsel appearing on behalf of the State of Jharkhand would submit that the decision in **Zunjarrao Bhikaji Nagarkar** (supra) was a two Judge Bench and a three Judge Bench of the Hon'ble Supreme Court in **Duli Chand** (supra) categorically held that the decision in

Zunjarrao Bhikaji Nagarkar (supra) was contrary to **K.K. Dhawan** (supra) and **Zunjarrao Bhikaji Nagarkar**'s case does not correctly represent the law and in **Ramesh Chander Singh** (supra), though of a three Judge Bench, but the decision in **Duli Chand** (supra) was not considered while affirming the view expressed in **Zunjarrao Bhikaji Nagarkar** (supra) and hence the decision in **Duli Chand** (supra) has to be followed but not **Ramesh Chander Singh** (supra).

21. In view of the fact that in **Duli Chand** (supra), **Nagarkar** (supra) was held to be not representing the correct law and in later decision in **Ramesh Chander Singh** (supra), the decision in **Duli Chand** (supra) was not considered while accepting the view expressed in **Nagarkar** (supra), it is necessary to see ultimately what is the view expressed in all the aforesaid cases and whether there is any difference of opinion between the aforesaid decisions on the principle of law.

22. In **Union of India and Others Vs. P. Parameswaran, 2008 SCC OnLine Mad 1174**, a two Judge Bench of the **Hon'ble High Court of Madras** answered identical submissions, i.e., expression of contrary views by the Hon'ble Apex Court in **K.K. Dhawan** (supra) and **Duli Chand** (supra) on one side and **Nagarkar** (supra) and **Ramesh Chander Singh** (supra) on another side. The relevant observation is as under:-

“13. Once again, in this matter also, there is no reference to the earlier three Judge Bench judgment in Duli Chand's case. However, since Nagarkar's case was found to be contrary to the

earlier judgment of the Supreme Court in K.K.Dhawan case wherein the Supreme Court had laid down six instances under which a Government servant discharging quasi-judicial function can be proceeded in a disciplinary action (which have been already extracted). We will have to apply those facts also in the present case. But the subsequent judgment in Ramesh Chander Singh case (cited supra), K.G.Balakrishnan, CJ had referred to Nagarkar's case and quoted it with approval. Ultimately, the decisions will have to be applied depending on the fact situation of each case.

14. Therefore, if the decisions in K.K.Dhawan case, Nagarkar case, Duli Chand case, Ramesh Chander Singh case and Inspector Prem Chand case are read together, it is necessary that before initiating disciplinary action, the Department must have a prima facie material to show recklessness and that the officer had acted negligently or by his order unduly favoured a party and his action was actuated by corrupt motive. In fact, K.G. Balakrishnan, CJ in Rameh Chander Singh's case even took an exception to the practice of initiating disciplinary action against Officers merely because the orders passed by them were wrong. If all these tests are cumulatively applied, the Tribunal in the present case had correctly found that there was no mala fide motive on the part of the first respondent in passing the order and that a Government servant cannot be punished for a wrong interpretation of law. In the light of the above discussion, we feel that the CAT has correctly understood the scope of judicial review and has set aside the order of recovery passed against the petitioner”.

23. Yet in another decision in **Union of India Vs. Shri S. Rajguru**, a Division Bench of the **Hon'ble High Court of Delhi, 2014 SCC OnLine Del 4123** considered the identical submission, i.e., whether the decision in **Nagarkar** (supra) was at variance with the law stated in **K.K. Dhawan** (supra), observed as under:-

“18. In the facts and circumstances of the present case, the question whether the decision rendered by the Supreme Court in **Nagarkar** (supra) was at variance with the law stated by the Supreme Court in **K.K. Dhawan** (supra) is not relevant because even if the tests as laid down by the Supreme Court in **K.K. Dhawan** (supra) are applied, the facts of the present case clearly indicate that disciplinary proceedings against the respondent are not maintainable.

XXX

XXX

XXX

20. In the present case, a plain reading of the Articles of Charge as well as the statement of imputations clearly indicate that the sole basis for making the charges is the correctness of the decisions rendered by the respondent while he was acting as CIT (Appeals).

XXX

XXX

XXX

25. It can be seen from the above that the gravamen of the charges levelled against the respondent are not based on his conduct. Although it has been alleged that certain decisions rendered indicate a lack of devotion to duty, but a bare perusal of the statement of imputation and the Articles of Charge indicate that the gravamen of the charges is only that the respondent had rendered decisions which, according to the Revenue, were erroneous. This is certainly not the basis on which the proceedings for misconduct can be commenced against an officer who is charged with a quasi-judicial function. In **K.K. Dhawan's** case (*supra*) there was a specific allegation that the Officer had completed the assessment "*apparently with a view to confer to undue favour upon the assessee's concern*". The test laid down by the Supreme Court in that case must be read in the context of the facts placed before the Court. Although, the Court had held that where an officer had acted in a manner which would reflect upon his reputation for integrity or good faith or devotion to duty, a disciplinary action could be initiated. However, an act of an Officer which would reflect on his devotion to duty must be read in the context of his conduct and not the correctness of the decisions rendered by him in a multi-tiered appellate structure. The conduct of an officer must be alleged to be one, which reflects recklessness or complete disregard for the function that he is performing. Mere erroneous decisions on account of a mistake of law or facts, cannot be the basis of commencing proceedings for misconduct.

26. The decision in the case of **K.K. Dhawan** (*supra*) cannot be read to mean that misconduct proceedings can be commenced, alleging lack of devotion of duty, in cases where the decisions rendered by quasi-judicial authority are alleged to be erroneous. There has to be something more than mere allegation of erroneous decisions to charge an employee for misconduct; the conduct of an employee must be alleged to be reckless or for motives. In absence of such imputations, a charge made solely on the basis of a decision rendered by a quasi-judicial authority would not be sustainable.

27. The decision in the case of **Nagarkar** (*supra*) and in **K.K. Dhawan** (*supra*) are not at variance in the above respect and a wrong or erroneous exercise of jurisdiction by a quasi-judicial authority or a mistake of law or an error in facts or law, cannot form the basis of initiating disciplinary proceedings.

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.

29. It is relevant 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*).

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).

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".

24. The above decisions of the Hon'ble High Court of Delhi and the Hon'ble High Court of Madras clearly clarified the applicability of the decisions in **Nagarkar** (supra) and **Ramesh Chander Singh** (supra), in spite of the decision in **Duli Chand** (supra), while explaining the essence of law in **K.K. Dhawan** (supra).

25. Keeping in view, the above referred legal position when we examine the facts of the instant OA, as enumerated in various paragraphs above, and after applying all the tests, it is manifest that the decisions in **Nagarkar** (supra) and **Ramesh Chander Singh** (supra) are applicable to the case of the applicant. The basic charge pertaining to the discharge of quasi judicial functions by the applicant while acting as an Arbitrator under The Arbitration and Conciliation Act, 1996 in terms of Clause 11 of the tender documents. There was no allegation that he acted in order to unduly favour any party or that he had been actuated by any corrupt motive.

26. The contention of the respondents that the applicant has not submitted any reply to the impugned Charge Memorandum before filing of the OA is incorrect, as he submitted the reply to the Charge Memorandum on 02.02.2017 (Annexure A-5) and the same was not denied by the respondents in their counter.

27. This court ordinarily would not entertain the OA at the stage of charge sheet since the delinquent officer will get an opportunity

to disprove the charges levelled against him in the departmental enquiry, but as rightly submitted by the learned counsel for the applicant, there is no bar to entertain the OA at the stage of charge sheet when the initiation of disciplinary proceedings itself is against to law. In the present case, since a legal issue was raised and substantiated about non-maintainability of disciplinary proceedings against a quasi judicial authority, the submission of the learned counsel for the respondents is rejected.

28. With regard to the charge of release of amounts covered by the awards/orders by the applicant without the approval of Chief Secretary, the specific contention of the applicant at para 4.16 of the OA, the said power was delegated to him vide Annexure A/6 minutes of JEPC, dated 21.09.2012, was not denied by the respondents in their reply or by any other subsequent affidavit.

29. In view of the above referred fact situation and the principles of law as observed above, all the issues are held in favour of the applicant.

30. Accordingly, the OA is allowed and the impugned orders are quashed. However, this order shall not preclude the respondents from questioning the orders/awards passed by the applicant in exercise of his quasi judicial functions as an Arbitrator, before an

appropriate court, if they are so advised, in accordance with law.

No costs.

Pending MAs, if any, stand disposed of.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)

I have gone through the judgment prepared by my brother Hon'ble Sh. V. Ajay Kumar, Member (J). With great respect, I disagree with the decision/conclusion arrived at by my learned brother.

2. This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

- “a) Quash and set aside the impugned chargesheet (Annexure A/1) and the impugned order whereby the respondents have appointed Inquiry Officer and Presenting Officer (Annexure A/2)
- b) Accord all consequential benefits including seniority and promotion.
- c) Award costs of the proceedings; and
- d) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants.”

3. The facts, in brief, are that the applicant is a 1983 batch IAS Officer and is presently posted as Member Secretary, National Capital Region Planning Board under Ministry of Urban Development, Government of India on deputation basis

and left with only 2½ service before his superannuation. He was served with Memorandum dated 09.03.2016, whereby the respondents intimated that they propose to initiate the departmental proceedings under the All India Services (Discipline and Appeal) Rules, 1969. The said Memorandum was accompanied by Articles of Charges & Imputation of Misconduct and Misbehaviour, which are as under:-

ARTICLES OF CHARGES

1. Irregularities made in the payment in the year 2012-13 of the deducted late fine charges from the printers as per the terms of the contract in course of printing and supply of free text books in different years under Sarva Shiksha Abhiyan of Jharkhand Education Project Council, Jharkhand, Ranchi.
2. As an Arbitrator, in violation of Arbitration and Conciliation Act, concluded the hearings of the proceedings of Arbitration in a single day without giving opportunity to both the parties to reply on the representation/submitted letter and evidences etc. put forth by both the parties. To conduct Arbitration proceeding without the request/notice of the Printers for the Arbitration, non-issuance of the information of the information of the scheduled date for arbitration from the Human Resource Development Department, non-availability of Receipt/acknowledgement, no receipt of written statement of both parties during hearing, no receipt of written statement of Jharkhand Education Project Council etc. and non-compliance of other processes duly required.
3. Jharkhand Education Project Council issued cheque to the Printers without any forwarding letter (containing details of all payments and unit wise deductions). Total liabilities of ₹ 7,92,33,899/- of the years 2007-08 to 2011-12 paid without approval of the Chief Secretary

whereas the order of the Chief Secretary was taken on deductions of the amount, due to delay in supply of books.

Sd/-

(Suman Kumar)
Special Secretary to Government)

Details of Imputation of Misconduct and Misbehaviour

1. The above act of Shri B K Tripathi, IAS (JH: 83) is against the responsibilities and unbecoming of an officer of the All India Service and hence he has made himself liable for disciplinary action under the All India Service (Discipline and Appeal) Rules, 1969- Rule 8.

2. Shri Tripathi has violated Sections 12 (1), 12(2), 23 (1), 23(2), 24(2), 24(3), 18 and 23 of the Arbitration and Conciliation Act, 1996. The procedure of Arbitration is unlawful.

3. After the order was passed in the Arbitration, Shri Tripathi without a clear provision and without the approval of the Chief Secretary allowed payment from the budget of financial year 2012-13 for the deductions made in 2007-08 to 2011-12 which is against financial provisions and administrative norms. Since the deductions due to delay had been made by the orders of the Chief Secretary, the payment was to be made only after the order/approval of the Chief Secretary”.

Sd/-

(Suman Kumar)
Special Secretary to Government)”

A perusal of the above indicate that the applicant has been charged for violating various sections of the Arbitration and Conciliation Act, 1996 (in short “the Act”) and that the procedure of arbitration conducted by the applicant is not lawful. It is further an imputation against the applicant that

consequent upon the orders passed by the applicant in the arbitration proceedings, payments were allowed without the order/approval of the Chief Secretary. In this regard, it is mentioned that applicant while posted as Secretary, Human Resource Development Department (HRDD), Government of Jharkhand at that point of time and in terms of Clause 11 of the contracts between the Government and the private parties, Secretary, HRDD was the nominated/appointed arbitrator in case of disputes arising of those contracts. The disputes were to be entertained, heard and finalised as per the provisions of the Act He has relied upon Clause 11 of the said Act wherein it has been held as under:-

“11. Settlement of Disputes

The dispute resolution mechanism to be applied pursuant to GCC Clause 24 shall be as follows:-

- (a) In case of dispute or difference arising between the copyright holder and printer (s) relating to any matter arising out of or connected with this agreement or contract, such disputes or difference shall be sorted out at the level of State Project Director, JPEC and printer(s). If the dispute persists to remain unsolved then it will be entertained, heard and finalised as per the provisions of the Arbitration and Conciliation Act, 1996. The Arbitrator will be the Secretary, Human Resource Development Department, Government of Jharkhand Ranchi.
- (b) The decision of the arbitrator shall be final and binding upon both the parties”.

4. The applicant further avers that he held the arbitration proceedings and passed necessary awards and acted and adjudicated

as per his wisdom and no fault has been found by either party including the State of Jharkhand as the awards have not been challenged. He, on his own, has passed awards in favour and also against the respondents/Government of Jharkhand. The arbitration proceedings are quasi judicial in nature and are appealable at the instance of either party, by virtue of Section 34 of the Act.

5. He has next pleaded that upon receipt of impugned charge Memorandum dated 09.03.2016 he submitted a letter to the respondents asking for certain documents and permission of 2 months time to send his reply vide letter dated 25.04.2016 (Annexure A-3). Thereafter, the Government of Jharkhand vide letter dated 27.06.2017 sent certain documents. On perusal of the same, it was seen that a copy of all the files relating to articles of charge and statement of imputation of misconduct and misbehaviour had not been sent which prevented him to file his reply in time. Again, vide letter dated 23.08.2016 (Annexure A-4) wherein he mentioned that only a certain portion of the relevant files have been sent to him. After receiving the necessary papers, he submitted a detailed reply on 02.02.2017 (Annexure A-5) wherein he has raised various short comings in the committee report indicating non-application of mind and the same is a perfunctory, superficial and biased. Further, he has categorically submitted that his orders as arbitrator are quasi-judicial orders and any attempt to enquire in an administrative manner will be against all canons of law and if the authorities are dissatisfied with his orders, the

only option would be to file an appeal before the competent court of law. He has also mentioned that the then Chief Secretary was not required since the Secretary, HRD had been given power by the Executive Council of JPEC to make payments of any amount. Since the powers had already been delegated to the departmental head, there is no requirement of getting approval at a higher level and the same is annexed as Annexure A-6.

6. The applicant has further submitted that without considering the detailed and point wise reply, the respondents have appointed IO and PO vide order dated 17.03.2017 (Annexure A-2). The IO is junior of the applicant and has been a member of the enquiry committee who had conducted the preliminary enquiry, the report of which is the sole document referred to and to be relied upon in the DE. Further, the charge memo has not been issued by the competent authority and it is a trite law that it is only the competent authority who can take a decision to initiate charge proceedings. It is thus a case of “no evidence”, hence the charge sheet is liable to be quashed.

7. Lastly, due to the impugned charge memo the applicant has lost his empanelment as Secretary to the Government of India, in June, 2016 and is highly prejudiced with the impugned actions of the respondents, i.e., for release of amounts withheld/deducted to a total tune of Rs.7,92,33,899/- to various Printers/Suppliers of Text Books for free supply under the Sarva Shiksha Abhiyan Project of JEPC during 2007-08 to 2011-12.

8. On the basis of the above, following five issues have to be dealt with, which are as under:-

- (i) That the charge sheet has not been approved by the disciplinary authority.
- (ii) The procedure under Rule 8(6)(a) of All India Services (Discipline & Appeal) Rules has not been followed and hence, unreasonable decision has been taken.
- (iii) That the present case is of no evidence. No witness is proposed to be examined.
- (iv) That the appointment of conducting officer is illegal.
- (v) That no disciplinary proceedings can be initiated in discharging quasi-judicial functions.

9. It was the main contention of the respondents that the applicant in this OA was working as Principal Secretary, Human Resources Development Department (HRDD) from 18.07.2011 to 31.01.2013. He was simultaneously also holding the charge of State Project Director, Jharkhand Education Project Council (JEPC) from 20.04.2012 to 31.01.2013, except for 32 days in the months of October, and November, 2013.

10. Following his departure from the post of Principal Secretary, HRDD, State of Jharkhand and Project Director of JEPC, the State set up a three-member Committee headed by Development

Commissioner vide Notification Memo no. 1711 dated 28.08.2015 and the terms of reference of this enquiry were as under:-

“Inquiry in relation with the payment of amount of penalty in the year 2012-13, deducted as per the terms of bid on account of printing and supply of text books for distribution among the students of schools in the State under ‘Sarva Shiksha Abhiyan’ Project in different years.”

After receipt of the report from this Committee, it was considered appropriate that the version of the officer, who took a decision for releasing the penalty payment to publishers/printers through Arbitration, was sought. The reaction of the applicant, currently, Member Secretary, National Capital Region Planning Board, Lodhi Road, New Delhi, was obtained which is enclosed as Annexure-2.

11. The Committee enclosed Table [Annexure 3(a) to 3(I)] containing publisher-wise analysis done by the members of the Committee in its meetings on the basis of available files and facts and information made available by the Secretary, School Education and Literacy Department, Jharkhand and State Project, Jharkhand Education Project, Publisher-wise analysis made by the Committee. The Committee found that as a Principal Secretary of HRDD, the applicant in this OA was entrusted to carry out an arbitration in case there was a request to do so from a publisher after they had first addressed and taken up their grievances with the Project Director, JEPC of the State of Jharkhand and if they did not receive a satisfactory response from the JEPC, they could ask for arbitration.

The details of one case in which arbitration was done by the applicant of this OA is as follows:-

I. M/s Pitambara Books Pvt. Ltd. (Year 2007-08)

- a) After receiving payment on 17.3.2008, the publisher submitted an ordinary application on 7.2.2009 before the State Project Director requesting for payment of the balance amount. In the said application, there is no mention of any deducted amount whereas he would have received full knowledge about the deducted amount and reason for deduction at the time of receiving the payment. In case the State Project Director does not provide this information to the publisher in writing, yet the publisher can obtain the information about deduction either at the time of receiving the payment itself or thereafter by raising a query.
- b) If a publisher receives lesser payment than the approved amount, he will file a justifiable representation immediately on receiving such lesser amount and not after 11 months.
- c) The letter of publisher dated 14.12.2012 whose reference has been made for the arbitration, is addressed to Secretary, HRD Ranchi, Jharkhand. This letter does not contain any information about the

deduction on account of late penalty during 2007-08 and its explanation.

- d) In the letter dated 14.12.2012, no request has been made for arbitration. Moreover, the publisher has merely prayed for release of the balance amount, while describing his poor economic condition and praying for sympathetic consideration of his requests.
- e) In the aforesaid letter, there is mention about sending of some letters, but these letters have not been received by the office of State Project Director. This information has been given by the State Project Director. Though it is stated that photocopies of the reminders following the aforesaid letter are said to have been annexed, but no such letters are available on record.
- f) The abovementioned application is addressed to the Secretary, Human Resource Ministry, Ranchi whereas this letter should have been sent at the address of JEPC as prescribed in the bid document.
- g) The letter of the publisher addressed to the Secretary, Human Resource Ministry should have been entered in the departmental file and then, after due consideration, should have been forwarded to State Project Director but no action was taken on this application by the Human Resource Ministry office.

- h) In the year 2007-08 although the Principal Secretary was the Arbitrator as per the rules but the point of consideration here is that when the Principal Secretary was in charge of the post of State Project Director, then in such a situation, whether it was just and proper for him to play the role of Arbitrator.
- i) It is also evident that as per the provisions and procedures of Arbitration Act, the date of arbitration has not been communicated to both the parties while giving them reasonable time for the purpose. In the present case, neither any notice was given to the Human Resource Department nor was any proof of service of notice retained in the file. Notice of arbitration hearing was issued on 8.1.2013 by the Administrative Officer in the office of Jharkhand Education Project and the date of hearing was fixed just after two days of the notice i.e. on 10.1.2013.
- j) In the so-called arbitration order, there is no mention as to who appeared in the arbitration on behalf of the Jharkhand Education Project whereas it is clearly mentioned in the order that Sri Vivek Bansal was the representative of the publisher. Administrative Officer of JEPC has marked his signature on the attendance sheet only.

- k) Point-wise written statement of both parties (**as mentioned by the applicant in his reaction**) is not annexed with the alleged arbitration order. One application dated 10.1.13 of the publisher is available in the file which is addressed to the 'Secretary', but there is no signature of the Departmental Secretary in the Dak Register. This application has been directly endorsed to the office by some another officer of JEPC on 17.1.13 (after the date of hearing i.e. 10.1.2013).
- l) Entire proceeding of the alleged arbitration was completed in one day, i.e. on 10.1.2013 whereas the Act provides that arbitration order shall be passed only after the parties file statement of claim/defence, full opportunity is given to parties for adducing evidence, etc., sufficient opportunity is given to them for filing replies and thereafter the evidence on record are properly considered by arbitrator. Relevant provisions of the Arbitration and Conciliation Act are quoted herein below for ready reference:-

“18. Equal treatment of parties – The parties shall be treated with equality and each party shall be given a full opportunity to present his case”.

23. “Statement of claim and defence:-

Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these

particulars, unless the parties have otherwise agreed as to the required elements of those statements.”

- m) In his letter dated 3.5.2007, the publisher has requested for condonation of delay of 20 days on the ground of ‘delay in approval of cover design’ but no decision was taken on this letter by the then State Project Director. Thereafter the publisher did not submit any representation/application in this regard. This explanation has been given by the later State Project Director, which clearly proves that the publisher was facing no hardship giving rise to Force Majeure for him, otherwise he would have taken appropriate action for resolving the hardship during the publication process itself and
- n) After conducting one day hearing on 10.1.2013, the Principal Secretary-cum-Arbitrator signed the arbitration order on 19.1.2013 which was issued from the Cell of Principal Secretary. It does not appear justified.

12. Similar irregularities have been stressed in the case of the following Printers also whose cases were decided in arbitration by the Principal Secretary HRDD:-

Name of Printer	Date of the application in which the so-called arbitration decision was taken	Date of communicating the so-called arbitration	Date of hearing	Date of issue of order	Date of compliance order

M/s National Printers, Ranchi (07-08)	24.12.2012	8.1.13	10.1.13 at 12 noon	17.1.13	17.1.13 cheque issued
M/s National Printers, Ranchi (11-12)	24.12.2012	8.1.13	10.1.13 at 12 noon	17.1.13	17.1.13 cheque issued
M/s. Anand Publications, Jalgaon (11-12)	19.12.2012	8.1.13	12.1.13 at 12 noon	19.1.13	19.1.13 cheque issued.
M/s Bhargava Bhushan Press, Varanasi (10-11)	1.1.13	10.1.13	12.1.13 at noon	17.1.13	17.1.13 Cheque issued.
M/s Bhargava Bhushan Press, Varanasi (11-12)	1.1.13	10.1.13	12.1.13 at noon	17.1.13	17.1.13 Cheque issued.
M/s Gopsons Paper Ltd. Noida (08-09)	18.12.2012	8.1.13	12.1.13 at 12 noon	19.1.13	19.1.13 cheque issued
Swapna Printing Works, Kolkata (10-11)	30.8.12 and 6.9.12	8.1.13	10.1.13 at 12 noon	17.1.13	17.1.13 cheque issued.

As except details – the assertions with regard to the irregularities against the Principal Secretary are similar and hence not repeated here.

13. The enquiry also pointed out serious financial irregularities committed by the applicant of this OA. During his functioning as Principal Secretary, it was found that the payment of liabilities pertaining to the year 2007-08 and other years prior to the budget year 2012-13 were made from the budget available for the year 2012-13. This is a gross violation of the provisions and clauses of the Financial Rules. The respondents drew our attention to

the following provisions of the Manual on Financial Management and Procurement for Sarv Shiksha Abhiyan:-

- “8.8.1 Funds of the Society shall not be diverted or re-appropriated to meet any expenditure which has not been sanctioned by the competent authority.
- 8.8.2 Funds shall not be diverted or re-appropriated to expenditure on any item not provided for or contemplated in sanctioned budget estimates.”

14. The further point of serious financial irregularity pointed out is the fact that the Printers were, on the same day of the Arbitral Award, i.e.16.1.2013 and 19.1.2013, paid the amounts as decreed by the Arbitrator without waiting for any further processing. In fact, they have sought to show their bona fides as under:-

DATE	PARTICULAR
18.02.2015	The then State Project Director reviewed the matter of payment of the penalty deducted by Jharkhand Education Projection Council (JPEC) to the Printer firms and presented the same to the Secretary, Human Resource Development Department for needful action.
20.08.2018	After getting detailed information Secretary, Human Resource Development Department forwarded the matter to the Chief Secretary for constitution of a High Level Enquiry Committee.
25.08.2015	Thereafter, the Chief Secretary recommended the matter to the Chief Minister for constitution of a three member Enquiry Committee.
28.08.2015	3-member enquiry committee was constituted vide Notification Memo No. 1711 consisting of Development Commissioner, Jharkhand, Principal Secretary, Planning cum Finance

	Department and Secretary, Department of Personnel, Administrative Reforms & Rajbhasha Department.
--	---

15. From the above observations, the respondents repeatedly pointed out that the actions of the Government of Jharkhand are only to protect the interest of the State and there is no malice or mala fide in their actions which can be challenged by the applicant at the stage of enquiry.

16. The respondents, in reply to the first issue raised by the applicant, have submitted that the all the necessary approval had been taken from the concerned authority while approving the charge-sheet.

17. In reply to second issue, the respondents submitted that the Disciplinary Authority had taken the decision to initiate disciplinary proceeding upon consideration of report of the three-member enquiry committee and the written representation of the applicant.

18. The respondents, in reply to third issue, contended that the present argument is entirely on merits and, therefore, ought not to be entertained by the Tribunal at this stage.

19. The respondents, in reply to fourth issue, submitted that it was noticed that the conducting officer appointed in the present case was not appropriate and, therefore, upon obtaining the approval of the Hon’ble Chief Minister of the State on 28.05.2017, a Correction

Order dated 01.06.2017 was issued with regard to the change of conducting officer by appointing Shri Sudhir Prasad, former Chief Secretary, State of Jharkhand.

20. The respondents while referring to fifth issue, submitted that the disciplinary proceedings can indeed be initiated against an officer discharging quasi judicial function.

21. From the above, it becomes clear that the respondents have been able to show that the necessary approval had been taken from the concerned authority, i.e. the Hon'ble Chief Minister of the State on 03.03.2016 while approving the charge-sheet by the disciplinary authority. They have further been able to show that the disciplinary authority had taken the decision to initiate disciplinary proceedings upon consideration of the three-member enquiry report and the written representation given to the respondents by the applicant. They have also been able to show that the present argument is entirely on merits and, therefore, ought not to be entertained by this Tribunal at this stage, as the matter is yet under inquiry. The respondents are able to show that the conducting officer appointed in the present OA was not appropriate and, therefore, upon obtaining the approval of the Hon'ble Chief Minister of the State on 28.05.2017, a Correction Order dated 01.06.2017 was issued with regard to the change of conducting officer by appointing one Shri Sudhir Prasad, former Chief Secretary, State of Jharkhand. The respondents have been able to show that that the disciplinary

proceedings can be initiated against an officer discharging quasi judicial function provided:

- Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.
- If there is a prima facie material to show recklessness or misconduct in the discharge of his duty.
- If he has acted in a manner unbecoming of a government servant.
- If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers.
- If he had acted in order to unduly favour a party.

22. The respondents have also drawn our attention to a decision in the matter of **M/s Hindustan Construction Company Ltd. V. State of Orissa & Anr., 2013(I)ILR-Cut-548** with regard to appointment of Arbitrator in which it was held as under:-

“Appointment of Arbitrator – Procedure – Petitioner has not issued demand notice to the Chief Engineer giving thirty days time for appointment of an Arbitrator – Non compliance of the mandatory procedure as required U/s 11 (4) (a) of the Act – Held, Arbitration petition is liable to be dismissed”.

23. The respondents have further drawn our attention to the decision in the case of **G.C. Kanungo v. Rourkela Steel Plant & Anr, 2012(I)ILR-CUT-1** and submitted that the applicant of the

present OA decided an arbitration without verifying opposite party (JEPC).

24. The respondents have also drawn our attention to the decision of the Hon'ble Apex Court with regard to officer taking decision in exercise of quasi judicial functions. In **Union of India & Ors. v. K.K. Dhawan, (1993) 2 SCC 56** it was held as under:-

“Officer taking decision in exercise of quasi judicial function-Not immune from the disciplinary proceedings – When can such proceedings be initiated – Conduct of the officer in discharge of his duties and not correctness or legality of his decision is subject to disciplinary action – Charge against respondent ITO of completion of income tax assessments in irregular and hasty manner with a view to confer undue favour upon assess without maintaining absolute integrity and devotion to duty and exhibiting conduct unbecoming of a Govt. servant in violation of R.3(1)(i),(ii) and (iii) of CCS (Conduct) Rules – Held, Govt. not precluded from taking disciplinary action against respondent.”

25. Admittedly, as accepted by both parties, the applicant was working as Principal Secretary, HRDD from 18.07.2011 to 31.01.2013. He was simultaneously also holding the charge of State Project Director, Jharkhand Education Project Council (JEPC) from 20.04.2012 to 31.01.2013, i.e. except for 32 days in the months of October, and November, 2013. Being the Principal Secretary, HRDD, State of Jharkhand, he was appointed as ex officio Arbitrator in respect of any dispute between the State of Jharkhand and the Printers and Suppliers of Textbooks to JEPC. Put simply, it can be concluded that he was discharging his official duties in three capacities, two in the executive capacity and third as a quasi judicial. As has been noted from the OA and arguments, he was Principal

Secretary/State Project Director of JEPC, i.e. he had two separate executive capacities and he entered into the third capacity as an Administrator and this is the quasi judicial functioning performed in the same overlapping period. It is a settled position of law that a person can act in dual multipurpose capacities, but such functioning cannot be allowed to be influenced by one another. As a quasi judicial authority/as Administrator, the applicant was exercising judicial/quasi judicial power to decide about the rights of the parties **to least** and its findings as such/thereon cannot be impeached collaterally or on an application of certiorari and these are binding until revised on appeal. But here the administrative actions, which occurred in the capacity of the applicant as Project Director, JEPC, and actions taken while working as Principal Secretary, HRDD, after receiving the award of arbitration which are administrative in nature, have been called into question. These are the administrative actions, which have apparently been seen as unbecoming of an officer and such actions are amenable to disciplinary actions.

26. Brief time chart of printer-wise decisions: (page -170)

Name of Printer	Date of the application in which the so-called arbitration decision was taken	Date of commu - nicatin g the so-called arbitrat -ion	Date of hearing	Date of issue of order	Date of compliance order
M/s Pitamba ra Books Pvt. Ltd.	14.12.2012	8.1.13	10.1.2013 at 12 noon	19.1.13	19.1.13 cheque issued

(07-08)					
M/s Pitambara Books Pvt. Ltd. (08-09)	14.12.2012	8.1.13	10.1.2013 at 12 noon	16.1.13	16.1.13 cheque issued
M/s National Printers, Ranchi (07-08)	24.12.2012	8.1.13	10.1.13 at 12 noon	17.1.13	17.1.13 cheque issued
M/s National Printers, Ranchi (11-12)	24.12.2012	8.1.13	10.1.13 at 12 noon	17.1.13	17.1.13 cheque issued
M/s. Anand Publications, Jalgaon (11-12)	19.12.2012	8.1.13	12.1.13 at 12 noon	19.1.13	19.1.13 cheque issued.
M/s Bhargava Bhushan Press, Varanasi (10-11)	1.1.13	10.1.13	12.1.13 at noon	17.1.13	17.1.13 Cheque issued.
M/s Bhargava Bhushan Press, Varanasi (11-12)	1.1.13	10.1.13	12.1.13 at noon	17.1.13	17.1.13 Cheque issued.
M/s Gopsons Paper Ltd. Noida (08-09)	18.12.2012	8.1.13	12.1.13 at 12 noon	19.1.13	19.1.13 cheque issued
Swapna Printing Works, Kolkata (10-11)	30.8.12 and 6.9.12	8.1.13	10.1.13 at 12 noon	17.1.13	17.1.13 cheque issued.

27. After the Award was made, the quasi judicial functioning of the applicant as an Arbitrator came to an end. Thereafter, action to

release payment of Rs.7,92,333,899/-, i.e. amount of about Rs. 8 crores was done by him on the same day, as the date of issue of arbitration order can be seen from the chart above.

28. The respondents have drawn our attention to the fact that “after conducting one day hearing on 10.01.2013, the Principal Secretary-cum-Arbitrator signed the arbitration order on 19.01.2013 which was issued from the Cell of Principal Secretary. It does not appear justified.” Further a serious violation of the Financial Rules and Manual on ‘Financial Management & Procurement’ were also found to have been done. The respondents have further stated that “allocation of budget for a Financial Year is done for the works/projects of that particular year unless otherwise specified clearly. Therefore, making payment of the liabilities pertaining to year 2007-08 from the budget of the year 2012-13 is gross violation of the provisions and clauses of Financial Rules. In this connection, the provisions of the Manual on Financial Management and Procurement for Sarv Shiksha Abhiyan have already been reproduced hereinabove.

29. It must be noted that the applicant has mentioned that as per the decision taken by the State Working Committee in its meeting held on 21.9.12, the power to sanction payment proposals of above-twenty lakh had been given to Principal Secretary/Secretary.

30. Here, it is again noted that this Project Management was a part of Government of India’s Scheme, namely, SarvShiksha

Abhiyan and the applicant has been unable to show that the change in the power to sanction payment proposals of over 25 lakhs has been approved by the Government of India's Sarv Shiksha Abhiyan guidelines. No State authority, let alone State Working Committee of the Sarv Shiksha Abhiyan, has powers to change the laid down Financial Management and Procurement Rules, except with the prior approval of the Government of India and Sarv Shiksha Abhiyan controlling authority. Therefore, it definitely needs to be probed as to how without any decision regarding the strengthening of financial powers of authority and before such a decision being duly notified or resolved by SarvShiksha Abhiyan, as per rules, could not have been *suo motu* implemented, as has been done in this case.

31. As has been clearly brought out from the chart quoted above, release of payments by the applicant from the camp of the Principal Secretary appears to be a clear case of administrative overreach and became the principal reason for investigation and charge-sheet. Firstly, the applicant could not have been a judge of his own cause. In other words, the moment he made the Award, it is questionable whether he should have taken a decision for its implementation and that too, on the same day as date of issue of the Award.

32. It has also been found that on previous occasions, when deduction of amount due to delay in supply of books occurred, the orders of the Chief Secretary were taken. The respondents clearly state that in this case, the applicant worked both as quasi judicial

authority and in executive capacity. Even though implementation of the award could only be held to be in executive capacity/administrative capacity, yet no due diligence is shown to have been made after receipt of the award and no processing of the same appears to have been done at the level of the JEPC or even in the Department of HRDD. Hence, it becomes clear that out of the three articles of charge, two are in respect of executive functioning. The sequence of dates and events indicate the entire proceedings prior to the initiation of arbitration and subsequent to date of issue of order were done in an extremely hurried manner and no required steps were taken/initiated to protect the interest of JEPC (as the applicant was Project Director of the JEPC) as well as that of Government (the applicant being the Principal Secretary, HRDD). No required steps are shown to be taken by the applicant to protect the interest of the JEPC as well as that of Government.

33. The respondents have drawn our attention to the opinion/findings of the of the State Working Committee that “Deficiencies/Drawbacks on the part of the Department and office of Education Project are visible on the points like coordination with printers/publishers during printing, observation of their work, solving their difficulties, execution of matters in file, timely communication of decisions, etc. The method of payment by cheques to the printers by the Jharkhand Education Project, without any forwarding letter

(which includes reasons for the payment along with the deductions), will not be said to be beyond doubt.”

34. The respondents have been able to show that “lack of proper action in respect of arbitration decision, its communication, operation and compliance therein has clearly been reflected. The proceedings of the Arbitration by then Principal Secretary-cum-SPD was contrary to the rules, was partial. Thus, this Arbitration cannot be said to be lawful. Submission of letter/representation by different printers within same time-period seeking arbitration in their matters immediate after a mere decision taken by the State Working Committee in its meeting dated 12.9.2012 thereby increasing the financial power of Principal Secretary; conducting Arbitration on the applications of printers without any delay; completing the entire arbitration proceedings in one day in a number of cases; passing arbitration order and its compliance the same day makes the entire matter doubtful. ***In some cases, it has been found that the amount refunded to the printers by means of the arbitration order was in excess of the actual amount deducted on account of delay in supply of books. Therefore, it is essential and would be advisable that the School Education and Literacy Department may be instructed to conduct inquiry/investigation into this matter separately and take action accordingly.***”

35. It is also seen that the letter of publisher dated 14.12.2012 whose reference has been made for the arbitration, is addressed to

Secretary, HRD Ranchi, Jharkhand. This letter does not contain any information about the deduction on account of later penalty during 2007-08 and its explanation. In this letter, no request has been made for arbitration. He has merely prayed for release of the balance amount. In the aforesaid letter, there is mention about sending of some letters, but these letters have not been received by the office of State Project Director. It is also stated that photocopies of the reminders following the aforesaid letter are said to have been annexed, but no such letters are available on record.

36. In short, the issue raised by the applicant in this OA is that the whole charge sheet is based only on one issue, i.e., challenge to the action of the applicant being appointed as an Arbitrator. The respondents have clearly explained that being appointed as Arbitrator under the provisions of the Arbitration Act, i.e., the applicant of this OA violated provisions of the Arbitration Act by not giving an opportunity to both the parties to submit reply and without consideration of the replies given and in the process so-called arbitration hearing was done on the same day which is against the rules as he paid Rs.7,92,33,899/- for the years 2007-08 to 2011-12 without the approval of the Chief Secretary when his approval was taken on deductions of the amount due to

delay in supply of books. Thus, he has acted in undue haste in passing the bills and paid Rs.7.92,33,899/- which is against Para 24 of the Tender Document at Section-III of Settlement of Disputes. Hence, he is liable to be punished for the gross negligence and passing the bills on a single day and the OA deserves to be dismissed on this score alone.

37. The next issue to be seen in this OA is also whether starting of the proceeding of arbitration by the applicant was as per the provisions and procedures of Arbitration Act. The date of arbitration has not been communicated to both parties while giving them reasonable time for the purpose. Neither any notice was given to the Human Resource Department nor was any proof of service of notice retained in the file. Notice of arbitration hearing was issued on 08.01.2013 by the Administrative Officer in the office of Jharkhand Education Project and the date of hearing was fixed just after two days of the notice, i.e. on 10.01.2013. In the arbitration order, there is no mention as to who appeared in the arbitration on behalf of Jharkhand Education Project whereas it is clearly mentioned in the

order that Sh. Vivek Bansal was the representative of the publisher. One application dated 10.01.2013 of the publisher is available in the file which is addressed to the Secretary but there is no signature of the Departmental Secretary, i.e. the applicant in the Dak Register. This application has been directly endorsed to the office by some another officer of JEPC on 17.1.2013 (after the date of hearing i.e. 10.1.2013). It is necessary here to submit that the entire proceeding of the alleged arbitration was completed in one day i.e. on 10.01.2013 whereas the Arbitration and Conciliation Act provides that arbitration order shall be passed only after the parties file statement of claim/defence, full opportunity is given to parties for adducing evidence, etc. sufficient opportunity is given to them for filing replies and thereafter the evidence on record are properly considered by arbitrator. The publisher vide letter dated 03.05.2007 has requested for condonation of delay of 20 days on the ground of delay in approval of cover design but no decision was taken on this letter by the State Project Director. Thereafter, the publisher did not submit any representation/application in this regard.

38. In this connection, the following provisions of the Manual on Financial Management and Procurement for Sarv Shiksha Abhiyan are worth referring:

(i) Funds of the society shall not be diverted or re-appropriated to meet any expenditure which has not been sanctioned by the competent authority.

(ii) Funds shall not be diverted or re-appropriated to expenditure on any item not provided for or contemplated in sanctioned budget estimates.

39. All the judgements relied upon by the applicant are squarely distinguishable on the ground that the only issue in all those cases pertains to the culpability or allegation of taking bribe or trying to favour any party in exercise of judicial/quasi judicial functioning. Whereas in the present case, the allegations basically pertain to conduct of the applicant as a Principal Secretary to the Department of HRDD and as in-charge of State Project Director, JEPC. The present case is pertaining to the executive functioning by the applicant and not his action while functioning as an Arbitrator. Wrong, if any, as alleged by the respondents, which crept in the Award, could have been rectified/had the applicant while functioning as an Executive of the State of Jharkhand as in-charge of JEPC as well as Principal Secretary, State of Jharkhand would have been more

vigilant and exercised his powers properly as alleged by the respondents.

40. The issuance of charge-sheet is only a step to give an opportunity to alleged delinquent officers who can disapprove the charges levelled against them in the departmental inquiry. Therefore, holding of a departmental inquiry cannot be throttled without allowing the same to be held.

41. Writ jurisdiction is discretionary jurisdiction and hence such discretion under [Article 226](#) should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

42. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

43. In ***Ministry of Defence and others Vs. Prabhash Chandra Mirdha*** 2012 (11) SCC 565, the Hon'ble Apex Court held as under:

“10. Ordinarily, a writ application does not lie against a charge-sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order, which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. Vs. Brahm Datt Sharma, 1987 (2) SCC 79; Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh & others, (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., 2001 (10) SCC 639; Special Director & Another Vs. Mohd. Ghulam Ghouse & another, 2004 (3) SCC 440 and Union of India & another Vs. Kunisetty Satyanarayana, 2006 (12) SCC 28.

11. In [State of Orissa & Anr. v. Sangram Keshari Misra & Anr.](#), (2010) 13 SCC 311, this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also: ***Union of India & others Vs. Upendra Singh***, (1994) 3 SCC 357).

12. Thus, the law on the issue can be summarised to the effect that charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor

the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings. [emphasis supplied] A Division Bench of this Court after considering various Supreme Court judgments in 2015 (2) MPHT 382 (***Jagdish Baheti Vs. State of M.P. & others***) held that normally the writ petition cannot be entertained against the charge-sheet when it is issued by the competent authority. For these reasons, I am not inclined to entertain the writ petition at this stage against the charge-sheet. Resultantly, this petition is disposed of by reserving liberty to the petitioner to prefer an appeal against suspension order and file a detailed reply against the charge-sheet. This Court has no doubt that the competent authority will consider the appeal memo and the reply to the charge-sheet while taking appropriate decision. With aforesaid observations, the petition is disposed of.

44. After having heard both the parties, it becomes clear from the precedents discussed above that this is an issue where charge-sheet has been issued to the applicant for irregularities committed in the year 2012-13. The only ground on which the charge-sheet is sought to be dismissed/set aside is that the actions undertaken by the applicant were related to quasi judicial functions discharged by him and the same could not have been questioned by

the State. However, the respondents have been able to show that the applicant worked as Principal Secretary, Human Resource Development Jharkhand State from 18.07.2011 to 31.01.2013 and simultaneously he was also in-charge of the post of State Project Director, JEPC from 20.04.2012 to 10.10.2012 and from 12.11.2012 to 31.01.2013. The charge-sheet issued is with regard to his alleged acts of omission and commission while working as Principal Secretary and as State Project Director, JEPC from 20.04.2012 to 10.10.2012 and from 12.11.2012 to 31.01.2013. The Hon'ble Supreme Court in the case of **Jagdish Baheti** (supra) held that normally the Writ Petition cannot be entertained against a charge-sheet when it is issued by the competent authority. Therefore, as per the judgments discussed above, neither the disciplinary proceedings nor the charge-sheet can be quashed at the initial stage as it would be premature to take a decision without first obtaining reply to the charge-sheet and disciplinary proceedings. Gravity of the alleged misconduct is a relevant factor which has to be taken into consideration while quashing the proceedings. The overlapping nature of the charges make out a clear case for not quashing the

charge-sheet at the initial stage as it would be a premature stage to deal with all these issues. The same very issue has been dealt by various judgments of the Apex Court, including the one in the case of **Upendra Singh** (supra). The applicant has himself admitted that he was working as Principal Secretary and as in-charge of State Project Director during the relevant period. Moreover, the charge-sheet also prima-facie brings out that after passing the orders as Arbitrator, he simultaneously passed orders as Principal Secretary without permitting the Jharkhand State Education Project Council or the authorities of the Department of Human Resource Development to examine and record their recommendations with regard to implementation of the award given by the Arbitrator. Further, payments were allegedly made against amounts not budgeted for in the said financial year. Hence, in view of the facts discussed above and after considering the various judgments cited above, there is no merit in the OA and the same is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

/lg/

The facts of this OA resulted in raising the following two main issues:-

- (i) Whether the alleged action of the applicant was exclusively quasi judicial in nature or the same is also executive;
- (ii) Whether a quasi judicial authority can be proceeded against under the relevant disciplinary and appeal rules in respect of the orders passed, in exercise of his quasi judicial functions; and
- (iii) Whether the disciplinary proceedings can be quashed at the stage of issuance of charge sheet itself.

2. Both of us, after considering the various case laws on the subject, concurrently opined that:

- (i) Against a quasi judicial authority, disciplinary proceedings cannot be initiated merely because the judgments/orders passed by him are wrong and not in accordance with law, however, there is no bar for the same when there are allegations of any bribe or extraneous consideration, etc., (with sufficient material thereto) influencing the said quasi judicial order; and
- (ii) Generally, disciplinary proceedings cannot be quashed at the stage of charge sheet, except when it is proved that the initiation itself is illegal and against law or when the same was issued by an incompetent authority or without power.

3. However, the Judicial Member, in the facts of the present case, while holding that disciplinary proceedings cannot be initiated against the applicant and that the charge sheet can be quashed,

allowed the OA, whereas the Hon'ble Administrative Member, again in the facts of the present case, held that disciplinary proceedings can be initiated against the applicant as his actions are besides judicial also in his executive capacity in the period of alleged irregularities and that the charge sheet can be quashed and accordingly, dismissed the OA.

4. Therefore, the views of both the Members, i.e. Judicial Member as well as Hon'ble Administrative Member does not differ on the point of law but, while applying the said legal principles to the facts of the present case, both of us have taken contrary views and accordingly, the Judicial Member allowed the OA whereas the Hon'ble Administrative Member dismissed the OA.

5. In view of the said contrary views, the OA may be referred to the Hon'ble Chairman of the Tribunal for hearing, either by himself, or by one/more of the other Members of the Tribunal to be nominated by him under Section 26 of the Administrative Tribunals Act, 1985 on the point of reference to the Third Member as under:-

“Whether in the facts of the presence case, the view expressed by the Member Judicial, or, the view expressed by the Hon'ble Administrative Member, is correct”.

6. The record of the OA shall be placed by the Registrar before

the Hon'ble Chairman to pass appropriate orders under Section 26 of the Administrative Tribunals Act, 1985.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)

RKS