

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01779/2018

DATED THIS THE 21st DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri.Nagaraj V.
S/o late M.Venkataramana
Aged about 47 years
Income Tax Officer
(under orders of dismissal from service)
ITAT-2, Income Tax Department
Bangalore.
R/at No.97, Banjar Orchid
Horamavu
Bangalore-560 043.

....Applicant

(By Advocate Sri B.B.Bajentri)

Vs.

1. The Union of India
Represented by its Central Board of
Direct Taxes, Jeevan Deep Building
Parliament Street
New Delhi-110 001.
2. The Principal Chief Commissioner
of Income Tax, Karnataka-Goa Region
CR Building, Queens Road
Bangalore-560 001.
3. The Commissioner of Income Tax
Bangalore-II
CR Building, 1st Floor, Queens Road
Bangalore-560 001.
4. The Principal Commissioner of
Income Tax
Shri Towers, No.565/A
A1, Hadadi Main Road
Davangere-577 002.

...Respondents

(By Advocate Sri Vishnu Bhat)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The factual matrix of the case is as follows:

The applicant was selected and appointed as Inspector of Central Excise on 19.2.1996. Subsequently, he joined Income Tax Department on 6.12.1996 as Inspector and was promoted as Income Tax Officer on 26.11.2006. He was posted as TRO Bangalore and was subsequently transferred to Goa in 2007 and again came back to Bangalore in 2009.

2. He submits that while working as Income Tax Officer at Ward-4(3) Bangalore, a complaint dtd.7.9.2012(Annexure-A1) was lodged by one Shri A.K.Halim(Chartered Accountant, Kerala) before the Superintendent of Police, CBI, ACB, Bangalore alleging that the applicant had demanded illegal gratification for finalizing the assessment of the complainant and do official favour. When the applicant went to the office of one Shri Nagin Chand Kincha(Chartered Accountant) on 8.9.2012 without being aware of the complainant's presence, to express gratitude for helping his mother-in-law to secure a bed in Mahaveer Jain Hospital, a trap was laid while receiving the illegal gratification by Shri Nagin Chand Kincha, claiming to be on behalf of the applicant. On the basis of the statement made by Shri Nagin Chand Kincha, the applicant was arrested and subsequently released on bail. Criminal proceedings initiated against him are seized before the Special Judge, CBI Court and is pending till today. The applicant was placed under suspension by the 3rd respondent on 10.9.2012 exercising power under Rule 10(2) of Rule 1965 retrospectively from 8.9.2012 in view of he having been under judicial custody for more than 48 hours(Annexure-A2). A show cause notice dtd.23.6.2014(Annexure-

A3) was issued by the 3rd respondent seeking explanation of the applicant for having committed misconduct of demanding and accepting the illegal gratification with an ulterior motive to reduce the tax liability while completing the assessment proceedings under Section 143(3) of IT Act 1961 relating to assessment of Sri A.K.Halim(Chartered Accountant, Kerala) for the assessment year 2008-09 and 2009-10. The applicant submitted detailed explanation to the show cause notice on 7.7.2014(Annexure-A4). The 3rd respondent issued a charge memo on 13.11.2014(Annexure-A5) without considering his reply to the show cause notice. The applicant submitted his reply dtd.26.11.2014(Annexure-A6) to the charge memo denying the allegations as false and baseless and that in view of the pendency of the criminal proceedings, requested for stay of further proceedings of disciplinary enquiry.

3. The applicant submits that on 27.1.2015(Annexures-A7 & 8), the Dy.Commissioner of Income Tax, Central Circle-2(1), Bangalore was appointed as enquiring authority and the Asst.Commissioner of Income Tax, Central Circle-1(3) Bangalore was appointed as Presenting Officer. It is submitted that on 2.11.2016, the applicant appeared before the enquiring authority and made a request to furnish the attested copies of the originals to submit his statement of defence. However, the Presenting Officer sought time to furnish the same and subsequently even before he could get the supporting documents to submit his statement of defence, the enquiring authority proceeded with the examination of the witnesses on behalf of the prosecution. Further on 4.7.2017, the Presenting Officer stated that he will rely on the deposition of the witnesses in front of the CBI officials and placed before the enquiring authority all the witnesses for examination, cross-examination and re-examination. Without following the procedure prescribed under the Rules 1965,

without giving any sufficient opportunity to the applicant, the enquiring authority proceeded to conclude the enquiry and submitted a report dtd.7.3.2018(Annexure-A9) holding the charges as proved. He submits that the 4th respondent issued a second show cause notice on 25.6.2018(Annexure-A10) seeking explanation to the report submitted by the enquiring authority on 7.3.2018. The applicant submitted a detailed explanation to the 2nd show cause notice dtd.25.6.2018 on 23.7.2018(Annexure-A11) explaining as to why the findings of the enquiring authority are perverse and cannot be accepted; that during the pendency of the criminal proceedings on the very same charges imposing any penalty on the findings of the enquiring authority would be impermissible and therefore requested not to conclude the proceedings. But the 4th respondent who is not the authority, proceeded to pass the impugned order of penalty of dismissal from service dtd.18.9.2018(Annexure-A12) exercising power under Rule 11 (ix) r/w Rule 15(6) of Rules 1965 against the applicant without considering his explanation. Being aggrieved by the same, the applicant has filed the present OA seeking to set aside the impugned order dtd.18.9.2018.

4. The applicant further submits that in the charge memo issued to him it was specifically stated that the charge is being made for having caught the applicant red handed accepting a bribe of Rs.5.00 lakhs from the complainant. However, the enquiry authority, has failed to prove the demand or acceptance and the money having been found on the table of the Chartered Accountant Sri Nagin Chand Kincha, the hands of the applicant having not turned pink, the prosecution has failed to prove the charges alleged. Further, an application was made seeking to re-examine Sri.A.K.Halim(Complainant) and also to examine Sri Nagin Chand Kincha, but no orders were passed by the enquiring authority on the said

memo/applications. The disciplinary authority ought to have considered the explanation submitted by the applicant to the 2nd show cause notice showing how perverse the findings of the enquiring authority and how the applicant was denied reasonable opportunity to defend himself. The applicant relies on the decision of the Hon'ble Apex Court in *B.A.Lingaiah Reddy vs. Karnataka State Transport Authority* (2015) 4 SCC 515 wherein it is held that 'when the statutory authority does not record the reasons, its decision would be rendered arbitrary, unfair, unjust and violative of Article 14 & 21 of the Constitution'. In the judgment reported in 2012 (4) SCC 407 [*Ravi Yeshwanth Bhoir vs. Collector*], the Hon'ble Apex Court held that 'rational behind requirement of recording reasons in an order is to enable the affected party as to why the decision has gone against him'. Hence, the impugned order being silent on the objections/contentions raised by him in the 2nd show cause notice, is liable to be set aside.

5. The applicant further submits that the enquiring authority even before the applicant could submit his statement of defence, has proceeded to examine the witnesses on behalf of the prosecution and thereby denied reasonable opportunity to him to defend himself. He filed a memo dtd.20.2.2018(Annexure-A13) requesting the inquiry officer to re-examine Sri.A.K.Halim but no orders have been passed on the same before submitting the inquiry report and hence the inquiry officer has not followed the procedure prescribed under the Rules 1965 to hold an enquiry for imposing a major penalty. During the course of enquiry, none of the witnesses produced on behalf of the prosecution have been able to depose that the applicant had demanded and accepted the illegal gratification. In fact the deposition of Miss.Suman Lunkar reveals that she was forced to make a statement against the applicant before the CBI officers(Annexure-A14). The contention of the complainant

that Nagin Chand Kincha was his Chartered Accountant and represented him before the applicant is fallacious. At no point of time Sri Nagin Chand Kincha had filed any application, during the course of assessment of A.K.Halim that he represents complainant. Therefore, the entire trap proceedings allegedly conducted, after the assessment of Shri A.K.Halim was finalized, is with the malafide intention of harassing the applicant for having not yielded to the pressure of the complainant to support his case. And during entire proceedings of the alleged trap at Nagin Chand Kincha's office, the DIG, CBI, Mr.R.Hitendra, who was head of the CBI Branch at Bangalore, was present and had conducted all the mahazars and recorded the statements of the witnesses. However, his name had not appeared in any of the mahazar or the statements. The entire proceedings have been recorded as if it was done by the investigation officer, Sri Shivanna of Inspector rank. In the case of *Sri SR Tiwari vs. UOI(2013(6)SCC 602) and 1992(2) SCC 10(Kuldip Singh vs. Commissioner of Police)* the Hon'ble Apex Court held that 'wherever the findings of the enquiry authority are based on 'no evidence' under such circumstances, the Courts/Tribunal have powers to intervene in the matter'. Admittedly, in the instant case, the enquiry officer's findings are perverse and are based on 'no evidence'. Therefore, the impugned order is liable to be set aside.

6. The respondents, on the other hand, have submitted in their reply statement that the applicant Shri V.Nagaraj while functioning as Income Tax Officer had demanded an illegal gratification of Rs.20 lakhs from A.K.Halim, an assessee, for completing the assessment proceedings relating to his income tax returns for Asst. Years 2008-09 and 2009-10 and for reducing the proposed tax liability of Rs.80 lakhs to Rs.30 lakhs on records during scrutiny proceedings for the above Asst.Years. The applicant was caught red handed by the CBI officials on 8.9.2012 accepting a bribe

of Rs.5 lakhs from Shri A.K.Halim based on his written complaint dtd.7.9.2012 lodged with the SP, CBI, ACB, Bangalore. By the above facts, the applicant had failed to maintain absolute integrity, devotion to duty and has acted in a manner unbecoming of a Govt. servant thereby contravening the provision of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964. The applicant had denied the charges as completely false and baseless. Accordingly, the Dy.Commissioner of Income Tax (Transfer Pricing), Circle 2(2)(2), Bangalore was appointed as the inquiry authority to enquire into the charges. Vide report dtd.7.3.2018, the enquiry officer gave a finding that the charges under Annexure-I & II levelled in the impugned charge sheet are substantiated against the Charged Official(CO). The logical sequence would indicate that the charges levelled against the CO are established. The applicant was given an opportunity of giving reply on the inquiry report. He submitted reply raising some of the objections to the charge memo issued. The inquiry officer has made detailed inquiry and has come to a logical conclusion that the charged officer had failed to maintain absolute integrity and devotion to duty. Based on the inquiry report and CO's objections, an order u/r 11(ix) r/w Rule 15(6) & 14 of the CCS(CCA) Rules, 1965 dtd.18.9.2018 was passed by the then Principal Commissioner of Income Tax, Davangere, imposing a major penalty of dismissal from service which shall ordinarily be a disqualification for future employment under the Government Services.

7. The respondents submit that the contention of the applicant that he went to the office of Shri Nagin Khincha, CA without being aware of the complainant's presence to express gratitude for helping applicant's mother-in-law to secure a bed in Mahaveer Jain Hospital is not excitable. It was pre-planned meeting as per the statement of Smt.Suman Lunkar, working with Mr.Nagin Khincha. She was

instructed to call both Sri Nagaraj(applicant) and Sri Halim(complainant) at the same time to the office. The contention of the applicant is an afterthought which he has not brought before CBI authorities at the time of trap in presence of independent witnesses. The applicant has completed the assessment without proper verification. The tax liability would have been much more. When the CBI team laid the trap and caught Mr.Nagin Khincha red handed, though the CO has not touched the money, it is clear from the circumstantial evidences that the CO was party to the pre-planned meet to receive the amount. If Mr.Nagin Khincha is not representing the case of A.K.Halim(complainant), for what purpose Mr.Halim has paid the amount to Mr.Khincha and why the assessment orders of A.K.Halim were found there. These issues clearly prove the real intentions of parties present. Based on circumstances, it is clear that the amount was received by Mr.Nagin Khincha, CA on behalf of applicant. As can be seen from the IO's order, the case hearings were postponed multiple times. At one point, the CO had become non-cooperative and the IO had to invoke provisions of Rule 14(20) of CCS(CCA) Rules to proceed on conducting enquiry on best judgment basis. Thereafter, the CO again joined the proceedings. As seen from the DOS No.21 dtd.9.2.2018, the Presenting Officer(PO) was asked to furnish the final PO brief by 19.2.2018. The PO served the PO brief on the CO on 19.2.2018 itself. So there was no lapse on the part of PO. On the issue of examination of Sri Nagin Khincha, it is pointed out to the Court that Nagin Khincha was not a prosecution witness in the CBI case. The IO relied on the witnesses listed by the CBI in its case. The CO was also free to produce any defence witness if so desired. The onus for producing defence witnesses is on the CO and not on the PO/IO. No statement of Nagin Khincha has been relied upon by the PO or IO, since he is a co-accused in CBI proceedings. As regards examination

of Sri Halim, sufficient opportunity was given to the CO to examine and cross-examine Sri Halim. Later the CO asked for re-examination of Sri.Halim. However, the CO could not give any cogent reason for demanding the re-examination. If opportunity for re-examination is given indiscriminately, then it will delay the proceedings indefinitely. It is the intent of law that the IO should give opportunity for re-examination only if the CO can give cogent and relevant reasons for seeking re-examination. Re-examination cannot be a ploy for delaying proceedings. The enquiry proceedings were concluded on 9.2.2018. All relevant documents were given to both PO and CO. PO was asked to furnish its report by 19.2.2018 which he did. The CO was given a date of 23.2.2018. When the CO failed to do so, further time was allowed till 3:00 pm on 28.2.2018. Hence, sufficient opportunity had been given. The CO did not furnish any rebuttal to the PO's brief. Regarding pendency of CBI case, the CVC has clearly taken stand in Circular dtd.31.7.2018(Annexure-R1) that both the proceedings are independent and departmental proceedings cannot be kept in abeyance. On the contention that 4th respondent, Pr.Commissioner of Income Tax, Davangere is not having any authority to pass penalty order, it is stated that CO has been transferred to Davangere and joined as ITO(OSD) on 1.5.2018, the CO became part of Davangere Charge and the Pr.Commissioner of Davangere has jurisdiction and every right to pass the order of penalty. The applicant had the remedy of appeal against the order of the disciplinary authority dtd.18.9.2018. Without exhausting the same, he approached the Tribunal. There is no extraordinary circumstance which calls for interference of this Tribunal. The case laws quoted by the applicant is not applicable to the facts of the case as no arbitrary order was passed. Therefore, the OA is liable to be dismissed.

8. The applicant has filed rejoinder contending that when the IO having relied

heavily on the statement made by Nagin Chand Kincha who was caught red handed receiving money from Halim, claiming to be on behalf of the applicant, the prosecution ought to have established that Nagin Chand Kincha had received the money on behalf of the applicant by recording his statement. In the absence of the statement of Nagin Chand Kincha, the IO could not have relied on the statement made by him. But in view of recovery mahazar dtd.8.9.2012(Annexure-A15), it shows that the IO had relied on the statement made by Nagin Chand Kincha and therefore, the IO ought to have recorded the statement of Nagin Chand Kincha, before relying on the statement made by him, through the other witnesses. IO has not stated any reasons for rejecting the request of the application of re-examination of Sri Halim. The disciplinary authority while considering the said contention has stated that cross-examination of Halim was completed on 7.2.2018 by CO. Therefore, denial of further cross-examination of Halim, amounts to denial of reasonable opportunity to defend himself. The 4th respondent could not have acted as disciplinary authority, when the charge memo and the explanation to the same have been examined by the 3rd respondent who had also appointed the inquiring authority. DIG Hitendra being the head of the CBI Branch at Bangalore was present and had conducted all the mahazars and recorded the statement of witnesses. The applicant had made a request to permit him to cross-examine him. The same was not allowed. Admittedly, on the basis of the evidence, it was Sri Nagin Chand Kincha who was caught redhanded and not the applicant. Therefore, the charge memo that applicant was caught redhanded is without any substance. The order sheet No.7 dtd.4.7.2017(Annexure-A16) shows that PO wanted to produce Sri Nagin Kincha as additional witness. However, he did not do so. The PO having stated that he would rely on the deposition of witnesses in front of CBI officials, he

was asked to arrange for production of all the witnesses for examination, cross-examination and re-examination of those witnesses. The entire proceedings held under Rule 14 of CCS(CCA) Rules, reveal that the applicant has been denied reasonable opportunity to defend himself in the enquiry. Therefore, the impugned order of penalty is on the basis of perverse findings of the enquiry officer.

9. The respondents have filed additional reply statement wherein they contend that the applicant has used cues taken from statement of independent witnesses to claim that the IO had relied on the statement of Sri Nagin Khincha. But the IO had not relied on the statement of Sri Nagin Khincha. There was no point of taking a statement from Sri Nagin Khincha as he was a co-accused. His statement would have no validity as he has reasonable cause to lie to protect himself. The IO had relied on the statements of the independent witnesses. It is weird that the applicant insists on the IO to rely on the statement of Shri Nagin Khincha. The IO knows his job and the applicant does not have to tell the IO how the IO has to do his job. The applicant was free to call Sri Nagin Khincha as defence witness. There was no need for the IO to call Sri Nagin Khincha. There were 26 prosecution witnesses. Most of them were CBI witnesses. The PO called them but they could not come on time. Statements of all independent witnesses have been taken. Other witnesses were employees of CBI. Since they rarely go hostile, their appearance was not pressed upon by the PO. It may be noted that disciplinary proceedings work on the basis of preponderance of probability rather than beyond reasonable doubt. Shri Hitendra, DIG was a Branch Head and has no role in this case except handing the case to his subordinates. The IO's order is a speaking order which clearly states the time extensions taken and the great number of opportunities given to the applicant. At one stage, the IO had nearly converted the proceedings into best judgment

proceedings due to the applicant's non-compliance. But the IO allowed the applicant to appear in proceedings even after that.

10. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Both the parties have filed their written arguments note. In this case, the incident which resulted in the disciplinary proceedings had taken place on 8.9.2012. The applicant was suspended w.e.f. 8.9.2012 and a show cause notice was issued to him on 23.6.2014 to which he replied on 7.7.2014. Subsequently, the charge memo under Rule 14 of CCS(CCA) Rules 1965 was issued on 13.11.2014. A reply to the charge memo was given on 26.11.2014 by the applicant. The disciplinary authority appointed the inquiry officer and presenting officer on 27.1.2015. In between, there was a stay on the proceedings and the stay was finally vacated and the inquiry officer was asked to proceed further on 26.10.2016. Regular hearings were conducted thereafter till January 2018. In between, the applicant had filed Write Petition before the Hon'ble High Court of Karnataka against the disciplinary proceedings and did not participate in the inquiry proceedings for some time. Subsequently, he continued to participate and statement of witnessess and cross-examination etc., were conducted. The interim brief of the presenting officer was submitted on 30.1.2018. The applicant submitted his reply on 6.2.2018. The presenting officer submitted his final brief on 19.2.2018. The inquiry officer submitted his inquiry report vide Annexure-A9 dtd.7.3.2018 and the applicant was given opportunity to file his written representation on the IO's report on 25.6.2018 which he did on 20.7.2018(Annexure-A11). The final orders in this regard were issued by the disciplinary authority vide Annexure-A12 dtd.18.9.2018.

11. There are two broad issues raised by the applicant; the first that he was not given adequate opportunity to defend himself and second, that the charge is not based on evidence but on surmises and conjectures. Let us now examine the same.

12. The applicant had requested for examining one Sri Nagin Chand Kincha who had received the tainted money from the complainant in the trap proceedings. The applicant would say that since the inquiry officer had depended on the statement of Sri Nagin Chand Kincha, his request for examining him not being considered vitiating the proceedings. The respondents have refuted the same saying that Sri Nagin Chand Kincha was not a prosecution witness but a co-accused in the CBI case and no statement of the person had been relied upon by the presenting and inquiry officers. They also stated that the applicant could have requested for Sri Nagin Chand Kincha's examination as a defence witness which he did not do so. One more request of the applicant to re-examine the complainant was not accepted by the inquiry officer since no specific reason for recalling the complainant was given by the applicant. The applicant later requested for re-examining the complainant to cover certain issues which were not raised earlier without specifying what those issues were. The respondents had considered that this will only delay the further proceedings and had not agreed to the request. The applicant has also stated that sufficient time was not given to him to submit his written brief. As already noted above, the inquiry officer's detailed report was forwarded to him on 25.6.2018 and he has submitted his rebuttal for the same in a detailed manner vide Annexure-A11 on 20.7.2018. Therefore, it is apparent that adequate time was given for furnishing his comments on the inquiry officer's report which he did. The applicant has also assailed the impugned order stating that the order has been issued by the

authority who did not initiate the charge. While the disciplinary proceedings were in progress, the applicant had been transferred to work under the control of the Principal Commissioner of Income Tax, Davangere who has issued the impugned order and he had the power to do so as per rules. Therefore, there is no merit in the contention of the applicant in this regard. As can be seen from the details of the proceedings given earlier, the disciplinary proceedings started from the year 2014 and finally came to a conclusion in September 2018. Adequate opportunity was given to the applicant to put forth his case in the proceedings at every stage and he had also submitted his detailed rebuttal to the report of the Inquiry Officer. Therefore, his contention that adequate time has not been given before the respondents finalized the disciplinary proceedings cannot be accepted. In fact in the meantime, he himself had stopped attending the proceedings and filed Writ Petition also in the Hon'ble High Court of Karnataka against the proceedings. The applicant has also submitted a number of cases and orders of the Hon'ble Apex Court relating to the sufficiency of evidences in the disciplinary proceedings, the opportunity to be given to defend and necessity to pass orders based on proper evidence instead of surmises and conjectures. He has also repeatedly urged that in the trap proceedings, no money was actually found on him and the chemical tests etc., also confirmed the same. Therefore, the proceedings against him on that basis are liable to be set aside. He would also take the plea that it was his initiative to re-open the assessment of the complainant for the years 2008-09 and 2009-2010 on which the department finally gained due to his re-assessment orders.

13. We have gone through the details of the records submitted including trap proceedings, inquiry officer's report and various other details furnished relating to the disciplinary proceedings undertaken. It is true that the assessment relating to

the complainant was re-opened by the applicant in the year 2012 and he had also conducted the proceedings in that regard based on the returns filed by the complainant on sale of his property and reinvestment wherein certain queries were raised and revised assessment of Rs.32 lakhs was made by the applicant. It is also true that the complainant had gone an appeal against this assessment and the applicant has also brought to notice certain other details relating to the complainant in April 2018 which may probably lead to an increased assessment against the complainant in favour of the department. The respondents would state that if the information against the complainant was available to the applicant, the same could have been considered by him during the assessment proceedings pending for assessment year 2009-2010 especially when there was sufficient time of 18 months to finalise the case for assessment year 2009-2010, indicating that the applicant's pointing out such issues now is not bonafide. The allegation against the applicant was that, based on the returns filed by the complainant relating to payment of tax on capital gains, he had raised certain questions about the development expenditure of about Rs.82.5 lakhs said to have been incurred by the complainant. The allegation was that had this discovery by the applicant been taken to its logical conclusion of not accepting the development expenditure as genuine, it would have resulted in raising the claim against the complainant to at least Rs.80 lakhs and in order not to do so, the applicant had indulged in extracting an illegal gratification from the complainant. The applicant did not pursue further relating to the verification of the details submitted regarding the development expenditure and in fact had added a portion of the capital gains not invested by the complainant in his new house and raised a demand of Rs.32 lakhs. In other words, the assessment for the year 2009-2010 was sought to be re-opened by the applicant based on his alleged suspicion

about the development expenditure reported by the complainant but the same was not taken up in the form of an increased assessment by disallowing that expenditure and instead applicant had finalised the assessment based on the balance of capital gains not invested by the complainant resulting in the increased assessment of Rs.32 lakhs. The respondents have maintained that had he continued in this assessment for disallowing the expenditure, the increased assessment should have been in the range of Rs.80 lakhs whereas it was only Rs.32 lakhs as admitted by the applicant. It is also apparent that when the applicant had time till 31.03.2014 to finalise his decision on the re-opening of the assessment for the year 2009-2010, he had speeded up and issued the order on 6.9.2012 itself. There have been telephone records of his talking to the complainant till 07.09.2012. The exact conversations are not known but it is not clear as to why an income tax officer should be in touch with the assessee at different points of time even late in the night on some occasions outside the office hours. Even though the applicant claims that this is a normal practice, the disciplinary authority has not considered it to be so. The applicant has also mentioned that the complainant had appeared in all the proceedings before him in person and Mr.Khincha was not his authorised representative and as such no credence should be given to the supposed transaction between the Chartered Accountant and the complainant and that his claim that the bribe money was taken to pay to the applicant. The applicant would urge that the entire trap proceedings should not be given any credence since the money was not taken by him and since Mr.Khincha was not an authorised representative of the complainant, there was no question of the issue being linked with the re-assessment order by the complainant. Regarding his attending the Chartered Accountant Mr.Khincha's office on a holiday on 8.9.2012, he claims that

he went there only to thank him for securing a bed for his mother-in-law's treatment in a private hospital. This apparent alibi is itself questionable in view of the fact that an Income Tax Officer would not normally need the help of a Chartered Accountant who appears before him for many cases to secure a bed that too in a private hospital. Further, in the statement he had given vide Annexure-R2 furnished by the respondents, he has also admitted that he came to the CA's office to collect the acknowledgement of the assessment order. This statement of his vide Annexure-R2 has also been confirmed consistently by the details of the trap proceedings and the statements of the independent witnessess. Nowhere during the initial stages has any explanation been given by the applicant stating that he had come to thank the Chartered Accountant for securing a bed for his mother-in-law. Even the plea of collecting acknowledgement for an assessment order appears to be dubious since when hundreds of such cases are handled by such officers, it defies logic as to why the assessing officer should go to a third person's office to collect an acknowledgement of an assessment order which he himself has issued. The applicant feigns ignorance as to how the assessment order landed up in the office of the Chartered Accountant who admittedly was not the authorised representative of the complainant. The various statements of the persons working in the office of Mr.Nagin Chand Khincha especially the lady assistant Smt.Suman Lunkar that the Chartered Accountant had instructed her to hand over the assessment order to the complainant on 07.09.2012 and her statement that he had come but did not take the assessment order and based on the instructions of the Chartered Accountant, the next day she had called the complainant to come to their office duly informing that the applicant would also be there, corroborate the charge of the respondents. This statement of her has been cross-examined and she has maintained that this is

what had happened. From the office records of the applicant, it is obvious that the assessment order approved by the applicant on 6.9.2012 was not dispatched to the complainant by the normal delivery channels. It is also a fact that the assessment order was indeed found in the office of the Chartered Accountant which the applicant does not deny having initially claimed that he came on a holiday to collect acknowledgement for this assessment order. The transcript of the trap proceedings would also point out the discussions that had taken place relating to the assessment order of the complainant in the office of the Chartered Accountant who is supposedly not the authorised representative of the complainant. It is not clear as to why a Govt. official should go to a third party's office to discuss about the assessment orders relating to some other person. The trap proceedings confirm the presence of money in the office of the Chartered Accountant. However, as contended by the applicant, the money was not found on his person. The co-accused in the CBI case, the Chartered Accountant was the person who took the money and had initially accepted that it was for the applicant. This aspect however will be part of the criminal proceedings in the parallel CBI case and the action taken against the applicant can only be discussed based on the corroborative evidence and the details furnished by the respondents. As we have seen, it was absolutely not necessary for an assessing officer to go to a Chartered Accountant's office ostensibly for the purpose of thanking him for securing a bed even though originally he had stated that he had come to take the acknowledgement of the assessment order. Both the excuses are straightaway dubious. The presence of the applicant in the office of the Chartered Accountant itself shows that it is very difficult to consider him as guiltless with respect to the matter at hand. The speed in finalizing the order, the frequent conversations with the complainant, the purported discussions in the

chamber of the Chartered Accountant and the presence of the applicant in the office of the Chartered Accountant on flimsy grounds all point out to the fact contrary to the claims of the applicant, a transaction was indeed in progress between the complainant and the applicant. As has been established in a number of cases by the Hon'ble Supreme Court, in such issues, the judicial authorities need not go into the sufficiency or adequacy of evidence in support of a particular conclusion. That is the matter which is within the competence of an authority which deals with the question. What can be enquired is whether there is any evidence at all in support of the impugned punishment. In other words, if the whole of the evidence led in the inquiry is accepted as true, does the conclusion follow that the charge in question is proved? The Hon'ble Apex Court held that this approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence the impugned conclusion follows or not. *[(1964) 4 SCR 718 : AIR 1964 SC 364 Union of India vs. H.C. Goel]*. As has been detailed above, the respondents' case has not rested merely on surmises or suspicions. There is very clear evidence of the intentions of the applicant and considerable corroborative evidence has been marshalled to support the charge.

14. From the records of this particular case and the details of the proceedings, it is amply clear that the respondents had given considerable opportunity to the applicant to defend himself and have passed a very reasoned and comprehensive order by taking severe note of the fact that persons in high positions like the applicant should not misuse their position for their personal benefit against the interest of the department for which they are working and should also function in a manner to maintain the reputation of the organisation which they are serving. The applicant has clearly not conducted himself up to that standard and therefore, the

order passed by the respondents cannot be assailed. At this point we should also note that the applicant has not chosen to challenge the order of the disciplinary authority to any appellate authority as is available to him. On all the above grounds, the OA stands dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/01779/2018

Annexure A1: Copy of the complaint dtd.7.9.2012

Annexure A2: Copy of the order of suspension dtd.10.9.2012

Annexure A3: Copy of the show cause notice dtd.23.6.2014

Annexure A4: Copy of the reply dtd.7.7.2014

Annexure-A5: Copy of the charge memo dtd.13.11.2014

Annexure-A6: Copy of the reply dtd.26.11.2014

Annexure-A7: Copy of the order dtd.27.1.2015

Annexure-A8: Copy of the order dtd.27.01.2015

Annexure-A9: A copy of the inquiry report dtd.7.3.2018

Annexure-A10: Copy of the official memorandum dtd.25.6.2018

Annexure-A11: Copy of the reply dtd.23.7.2018

Annexure-A12: Copy of the impugned order dtd.18.9.2018

Annexure-A13: Copy of the memo dtd.20.2.2018 seeking re-examination of Sri.A.K.Halim

Annexure-A14: A copy of the deposition of Miss Suman Lunkar

Annexures with reply statement:

Annexure-R1: Copy of Central Vigilance Commission Circular dtd.31.7.2018

Annexures with rejoinder:

Annexure-A15: Copy of the recovery mahazar dtd.8.9.2012

Annexure-A16: Copy of the order sheet dtd.4.7.2017

Annexures with written arguments note of the respondents:

Annexure-R1: Call details of mobile number 9880504579 from 1.8.2012 to 8.9.2012

Annexure-R2: Letter of the applicant dtd.8.9.2012 to the Inspector of Police, CBI

Annexure-R3: Letter of Smt.Suman Lunkar dtd.8.9.2012 to the Inspector of Police, CBI

Annexure-R4: Transcription of the conversation which took place during the trap proceedings

List of authorities filed by the applicant:

No.1: 1999(2) SCC 10

No.2: 2009(4) SCC 299

No.3: 2017(2) SCC 308

Additional list of authorities filed by the applicant:

No.4: AIR 1964 SC 364

No.5: 2009 (2) SCC 270

Annexures with additional written arguments filed by the respondents:

Annexure-R5: The order sheet dtd.7.2.2018 & 1999 SCC L&S 1036 para 11
