

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.201/2019
MA No.3262/2019**

This the 16th day of October, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Anuradha Mookerjee, aged 57 years, Group 'A'
D/o late Sham Sunder Chaudhary,
Principal Commissioner of Income Tax-2,
Jalandhar, Pin Code-144001. ... Applicant

(By Mr. Arvind Kumar, Mr. Vaibhav Prabhakar and Ms.
Devika Sharma, Advocates)

Versus

1. Union of India through Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
2. Chairperson,
Central Board of Direct Taxes,
Ministry of Finance, North Block,
New Delhi-110001. ... Respondents

(By Mr. R. K. Sharma, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant is an IRS officer of the 1986 batch, and at present she is holding the post of Principal Commissioner of Income Tax. In the year 2013, she functioned as Commissioner of Income Tax (Appeals) [CIT (Appeals)]. She was issued a

charge memorandum dated 14.08.2018, alleging that she entered into a collusive arrangement with Shri Chaman Lal Negi, then ACIT, Central Circle-I, Patna and the Assessing Officer, while disposing of an appeal preferred by M/s Ganga Carriers Pvt. Ltd. (GCPL). The second article of charge was that she prompted Shri Chaman Lal Negi, to submit his remand reports in a manner which was unduly haste, reckless and without due diligence and application of mind. The third limb of the charge was that the applicant passed orders in the appeal by entertaining the remand reports, which were not channelized through the Addl./JCIT, who approved the original assessment orders. The fourth aspect was that the remand reports were based upon the remarks of a new incumbent Assessing Officer, and that without approval of the Addl. CIT. Lastly, it was alleged that the applicant ignored the various observations made by the Assessing Officer, who completed such assessment. The subject matter of appeal is said to be Rs.55,67,22,264/-. This OA is filed challenging the charge memorandum.

2. The applicant contends that the charge memo was issued in the year 2018, just before her case was to be

considered for promotion to the post of Chief Commissioner of Income Tax (CCIT), and in the process, the appeal decided by her in the year 2013, was picked up. It is stated that the appeal was decided by her as a *quasi judicial* authority, and simply because the view taken by an Appellate Authority is not to the liking of the Department, disciplinary proceedings cannot be initiated. The applicant further states that the allegations made in the articles of charge are factually incorrect, and that can be demonstrated by the correspondence that ensued in this behalf, without the necessity of further inquiry. It is also stated that the office of the CCIT, Patna addressed repeated letters for taking up the high profile appeals at the earliest, and even she had to address letters to the assessee, who was reluctant in proceeding with the appeal, and it cannot be said that there was any undue haste in disposal of the same. It is also stated that in the second appeal preferred by the Department before the ITAT against the order passed by the applicant herein, no word was said about the so called irregularities or illegalities mentioned in the impugned charge memo.

3. The applicant further contends that ever since two search operations were conducted against the assessee, no

amount was recovered, much less it was refunded, as a result of the order passed by her, and that the case is now pending before the ITAT.

4. The respondents filed a counter affidavit opposing the OA. They take objection to the very filing of the OA, challenging the charge memo. They contend that the truth or otherwise of the articles of charge contained in the charge memo need to be dealt with in the inquiry, and the OA is not maintainable. They further submit that there is no prohibition against initiation of disciplinary proceedings in relation to the discharge of *quasi judicial* functions, and much would depend upon the facts of each case. The various contentions urged by the applicant are completely denied.

5. Shri Arvind Kumar, learned counsel for the applicant, submits that the applicant had a clean and unblemished record, spread over more than three decades, and at a time when she was to be considered for promotion to the post of CCIT, the disciplinary proceedings were initiated. He submits that though there is no prohibition in law against initiation of disciplinary proceedings in relation to discharge of *quasi judicial* powers, it can be only when there exists a *prima*

facie material, touching upon the aspects, such as corruption and dishonesty, that they can be initiated.

6. The learned counsel submits that the appeal in question was pending since 2011, and repeated reminders were being issued by the office of the CCIT, Patna, to the office of CIT (Appeals), for early disposal, and the applicant had also to take various measures to ensure appearance and participation of the appellant, and under these circumstances, the principal allegation that there was undue haste in disposal of the appeal, is factually incorrect. He further submits that the allegation as to collusion of the applicant with Chaman Lal Negi, is in a way, irresponsible, and that will mar the morale of the officers at various stages. The learned counsel further submits that the allegations contained in various articles are in relation to the same case, and that the one pertaining to the time taken for passing the order, is also untenable.

7. He relied upon the judgments of the Hon'ble Supreme Court in *Zunjarrao Bhikaji Nagarkar v Union of India & others* [(1999) 7 SCC 409]; *Union of India & others v K. K. Dhawan* [(1993) 2 SCC 56]; and *Union of India & others v A. N. Saxena* [(1992) 3 SCC124]; that of the Hon'ble High Court of

Delhi in *Union of India & others v Ajit Kumar Singh & others* [WP(C) No.3209/2012, decided on 05.08.2013]; and of this Tribunal in *S. Rajguru v Union of India* [OA No.2815/2012, decided on 01.02.2013], and *B. B. Mohanty v Union of India* [OA No.1208/2013, decided on 31.03.2014].

8. Shri R. K. Sharma, learned counsel for the respondents, on the other hand, submits that the OA cannot be entertained against a charge memo, and it is not even the case of the applicant that the authority who issued the charge memo is not conferred with the power to do so. He submits that it is only after verification of the relevant record that certain irregularities in the course of disposal of the appeal were noticed, and accordingly, the charge memo was issued. The learned counsel contends that there is no prohibition against initiation of disciplinary proceedings in relation to the discharge of duties by an officer in *quasi judicial* capacity. He too relied upon certain precedents.

9. In this OA, the challenge is to the charge memo dated 14.08.2018. The general principle is that whenever an employee or officer assails a charge memo, the Courts or Tribunals would be reluctant to interfere with the same, unless

the factors such as – (a) the charge memo having been issued by an officer not competent to do so; (b) the subject matter of the disciplinary proceedings is a fairly old and stale matter raked up at a stage when the officer or the employee was due for promotion; and (c) where even if the contents of the charges are taken as true, they do not constitute an act of misconduct; exist.

10. The principal contention urged in this OA is that the entire charge memo is in relation to the disposal of an appeal by the applicant in her *quasi judicial* capacity, and that the same cannot be the subject matter of disciplinary proceedings. We are of the view that two issues arise for consideration in this behalf, i.e., (i) whether initiation of the disciplinary proceedings against the applicant as regards the discharge of her functions in *quasi judicial* capacity, is permissible in law; and (ii) whether the allegations contained in the charge memo *prima facie* justify the proposed action.

11. With the expansion of the State activity, in the sovereign and non sovereign functions, adjudication of the issues up to certain level, became necessary. Obviously, with a view, not to burden the regular courts excessively, and, at the same time, not to give free hand to the administrative

authorities, the mechanism of *quasi judicial* adjudication is evolved. With each passing day, it is on the rise. Between the stage where the administrative authority passed an order, and the one, when it can be taken to the regular court of law, the corresponding law provides for adjudication of disputes by a *quasi judicial* authority. This is rampant in the field of direct and indirect taxation. The authority is to ensure that neither the assessee nor the State are put to a loss on account of long pendency of the adjudication before the regular courts.

12. It is but natural that the officer, who is entrusted with the *quasi judicial* functions, partakes the character of an administrator, and at the same time, an adjudicator. If he is subjected to the same control as in the case of an administrative officer, the very discharge of functions becomes redundant. If the *quasi judicial* authority has nothing more than to put a seal of approval on the decision taken by an administrative authority, the very purpose of providing the mechanism would stand defeated. A modicum of independence is required to be given to such authority.

13. Even while ensuring that a *quasi judicial* authority acts independently, he cannot be provided absolute immunity.

If there exists adequate proof or material to disclose that the powers have been misused with an ulterior motive, or for personal gain, the option for the administration to take disciplinary action cannot be shut. It is keeping in view, these two predominant considerations that the Hon'ble Supreme Court in *Union of India v A. N. Saxena's* case observed as under:

"7. It was urged before us by learned Counsel for the respondent that as the respondent was performing judicial or quasi-judicial functions in making the assessment orders in question even if his actions were wrong they could be corrected in an appeal or in revision and no disciplinary proceedings could be taken regarding such actions.

8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

This was reiterated in *Zunjarrao Bhikaji Nagarkar's* case. That was a case relating to an officer of the Central Excise Department. Acting as an Assessing Authority, he confiscated certain goods, and levied excise duty of Rs.3,57,000/-. Alleging that he did not levy penalty only with a motive to help the manufacturer, disciplinary proceedings were initiated against him. Challenging the charge memorandum, he filed an OA before the Bombay Bench of this Tribunal. On dismissal of the OA, he filed a writ petition before the Bombay High Court. That was also dismissed in *limine*, and then he approached the Hon'ble Supreme Court. By undertaking extensive discussion on the proposition that a mere wrong interpretation cannot be treated as an act of misconduct, Their Lordships observed as under:

"40.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*. The 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 a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal."

Incidentally, the judgment in *Zunjarrao Bhikaji Nagarkar* is relied upon by both the parties.

14. In *S. Rajguru's* case, this Tribunal referred to that very judgment of the Hon'ble Supreme Court on this issue. Paras 42 and 43 of the judgment were quoted. They read as under:

"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 where under 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.”

The OA was allowed and the charge memo issued to the officer, CIT (Appeals), with the allegation pertaining to discharge of *quasi judicial* powers, was set aside. The judgment of the Tribunal was upheld by the Hon’ble Delhi High Court in WP (C) No.5113/2014, decided on 13.08.2014. Their Lordships extensively quoted from the Judgment of the Hon’ble Supreme Court in *K. K. Dhawan* and *Zunjarrao Bhikaji Nagarkar’s* cases, apart from other judgments.

15. What becomes evident from the above discussion is that there is no prohibition as such against the initiation of disciplinary proceedings against an officer in relation to discharge of *quasi judicial* functions, but it must be with utmost care and caution. The mere existence of a view different from the one taken by the officer in the course of adjudication, by itself, cannot be treated as an act of misconduct. There must exist adequate material, even at the stage of issuance of charge

memo, which discloses the existence of ulterior motive, or dishonest intention on the part of the officer in deciding the matter in a particular way. Therefore, we answer the first issue to the effect that the disciplinary authority in this case does have the power to initiate the disciplinary proceedings in relation to the discharge of *quasi judicial* functions by the applicant also, subject to the rider that there must exist adequate material, even at the stage of issuance of charge memo, to disclose that the power has been misused for wrongful gains.

16. Coming to the second issue, which is mostly on facts, it becomes necessary to take note of the articles of charge framed against the applicant. They read as under:

“ARTICLE-I

That the said officer, Smt. Anuradha Mookerjee (Civil List No.86001, D.O.B.08.03.1961), while functioning as Commissioner of Income Tax (Appeals)-I, Patna during the month of March, 2013 and while passing the Appellate Order in the case of one assessee M/s. Ganga Carriers Pvt. Ltd. (PAN : AABCG1850E), A.Ys 2003-04 to 2009-10, had entered into a collusive arrangement with Shri Chaman Lal Negi, who was the then ACIT, Central Circle-I, Patna and the Assessing Officer in the case during that period, and the said assessee and allowed relief to the assessee to the tune of Rs.52,67,22,264/- in undue haste, i.e., in just 10 (ten) working days between 13.03.2013 and 26.03.2013 during which remand order was given to the said Assessing Officer,

remand reports received hastily from him, comments on the remand reports received hastily from the assessee and lengthy appellate orders allowing huge relief to the assessee were passed for all the seven assessment years (A.Ys 2003-04 to 2009-10) in the case with an objective to give undue favour to the assessee.

This act of Smt. Anuradha Mookerjee, which undid all the hard work done by the Directorate of Investigation, Patna and those of the Assessing Officer who had passed the original assessment orders consequent to a search and seizure action conducted on 11.06.2008 in the case, was totally reckless, surely lacking *bona fide* as having been taken without due diligence and care and the same points to her questionable motive.

By the aforesaid act of omission and commission, Smt. Anuradha Mookerjee failed to maintain absolute integrity and had shown complete lack of devotion to duty and had thus, exhibited conduct unbecoming of a Government servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said officer, Smt. Anuradha Mookerjee (Civil List No.86001, D.O.B.08.03.1961), while functioning as Commissioner of Income Tax (Appeals)-I, Patna during the month of March, 2013 and while passing the Appellate Order in the case of one assessee M/s. Ganga Carriers Pvt. Ltd. (PAN : AABCG1850E), A.Ys 2003-04 to 2009-10, had allowed only 4 (four) working days up to 19.03.2013 to the new A.O. Shri Chaman Lal Negi, who was unfamiliar with the case, to go through and/or examine the 572 pages of the Paper-books submitted by the A/R of the assessee, 247 pages of assessment orders and a number of issues therein involved in the appeals, voluminous cash books and ledgers for the seven assessment years 2003-04 to 2009-10 supposed to be contained in as many as 14 bags and then to submit his remand reports to her for all the seven different assessment years within a short span of those 4 days. She also did not give any specific

directions to Shri Negi, the newly incumbent Assessing Officer who was unfamiliar with the case, in respect of examination and verification of books of accounts and vouchers etc. Smt. Anuradha Mookerjee had thus prompted Shri Negi to submit his remand reports in a manner which was unduly hasty, reckless and without due diligence and application of mind.

By the aforesaid act of omission and commission, Smt. Anuradha Mookerjee failed to maintain absolute integrity and had shown complete lack of devotion to duty and had thus, exhibited conduct unbecoming of a Government servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said officer, Smt. Anuradha Mookerjee (Civil List No.86001, D.O.B.08.03.1961), while functioning as Commissioner of Income Tax (Appeals)-I, Patna during the month of March, 2013 and while passing the Appellate Order in the case of one assessee M/s. Ganga Carriers Pvt. Ltd. (PAN : AABCG1850E), A.Ys 2003-04 to 2009-10, had entertained the remand reports even though the AO, i.e. Shri Negi had not sent the remand reports through the Addl./JCIT, Central Range-I, Patna who had approved the original assessment orders. This was equivalent to allowing a subordinate officer to overrule his immediate superior's previous approval on the sly.

By the aforesaid act of omission and commission, Smt. Anuradha Mookerjee failed to maintain absolute integrity and had shown complete lack of devotion to duty and had thus, exhibited conduct unbecoming of a Government servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

That the said officer, Smt. Anuradha Mookerjee (Civil List No.86001, D.O.B.08.03.1961), while functioning as Commissioner of Income Tax (Appeals)-I, Patna during the month of March, 2013

and while passing the Appellate Order in the case of one assessee M/s. Ganga Carriers Pvt. Ltd. (PAN : AABCG1850E), A.Ys 2003-04 to 2009-10, had not gone through, much less examined critically, the A.O.'s Remand Reports & Assessee's comments thereon, both received within a span of two working days, before passing the appellate orders on the same day or the next day for each of the seven assessment years 2003-04 to 2009-10. In fact, in normal course, even the processes of dictation, transcription, typing, revision and finalisation of orders would not have been humanly possible in such a short time after receipt of remand reports and comments of assessee thereon.

Thus, Smt. Anuradha Mookerjee had, while passing the appellate orders giving relief of more than Rs.52.67 Crores in seven assessment years, relied unquestioningly upon the remand reports sent by the newly incumbent assessing officer without the specific approval of the Addl. CIT, Central Range-I, Patna and giving findings that were contrary to the detailed findings in the assessment orders passed with the approval of the Addl. CIT, Central Range-I, Patna.

By the aforesaid act of omission and commission, Smt. Anuradha Mookerjee failed to maintain absolute integrity and had shown complete lack of devotion to duty and had thus, exhibited conduct unbecoming of a Government servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-V

That the said officer, Smt. Anuradha Mookerjee (Civil List No.86001, D.O.B.08.03.1961), while functioning as Commissioner of Income Tax (Appeals)-I, Patna during the month of March, 2013 and while passing the Appellate Order in the case of one assessee M/s. Ganga Carriers Pvt. Ltd. (PAN : AABCG1850E), A.Ys 2003-04 to 2009-10, had ignored the express recording of the Assessing Officer, who had completed the search assessments in the case, about the non-genuineness of assessee's accounts and vouchers and readily accepted the hastily

prepared remand reports, submitted by the succeeding Assessing Officer Shri Chaman Lal Negi, giving the assessee almost a clean chit.

By the aforesaid act of omission and commission, Smt. Anuradha Mookerjee failed to maintain absolute integrity and had shown complete lack of devotion to duty and had thus, exhibited conduct unbecoming of a Government servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

17. All the articles are in relation to the disposal of an appeal filed by an assessee M/s GCPL; by the applicant, in her capacity as CIT (Appeals), Patna. The gravamen of the charge is contained in Article-I. In the remaining Articles, certain other subsidiary aspects are supplemented. From a perusal of Article-I, it becomes clear that the allegation against the applicant is – (a) she entered into a collusive arrangement with Chaman Lal Negi, the then ACIT, Central Circle-1, Patna, and the Assessing Officer, who worked during that period; and (b) that she decided the appeal with undue haste, and granted the relief to the assessee to the tune of Rs.55,67,22,264/- within ten days from requiring the remand orders, and thereby she undid all the hard work done by the Directorate of Investigation. The purport of the remaining Articles was indicated in the introductory paragraphs, and the full text of the Articles is extracted above. Another aspect is that though the figure of

Rs.55,67,22,264/- is mentioned, it is stated that the value of the appeal itself was Rs.31,62,57,725/-. At the most, it can be a mistake of fact, but it cannot be of much consequence.

18. Normally, the disciplinary proceedings are initiated whenever the concerned authority receives information about the acts of misconduct on the part of an employee, and the truth or otherwise thereof, is to be established in the disciplinary inquiry. The Hon'ble Supreme Court, through a catena of judgments held that if the disciplinary proceedings pertain to the manner in which an officer has discharged his *quasi judicial* functions, the mere information is not adequate, and suspicion alone cannot constitute the basis. The relevant paragraphs of the judgments in *A. N. Saxena* and *Zunjarrao Bhikaji Nagarkar's* cases have already been extracted hereinabove. This has been scrupulously followed by this Tribunal in *S. Rajguru's* case, which, in turn, was upheld by the Hon'ble High Court of Delhi.

19. In the instant case, there is not even an allegation that the applicant resorted to any acts of dishonesty or wrongful gain. The whole edifice of the charge memo is built on the foundation of the so called hasty disposal of the appeal.

Rest of the allegations are supplemental thereto. In other words, had the applicant kept the appeal for a few more months, the disciplinary authority would not have any qualms about it.

20. There may be instances where a *quasi judicial* authority picks up matters selectively, and out of turn, and grants relief, which is not permissible in law. In such cases, more than the extent of relief, the manner in which it was granted, becomes relevant. The very taking up of the appeal and the case, out of turn, may lead to an inference that it was done with a clear objective of conferring undue benefit on the assessee. In the instant case also, if the applicant had exhibited undue haste in taking up the appeal in question, the respondents can be said to be justified to certain extent. Therefore, it becomes necessary to refer to some undisputed documents, which are part of the record.

21. The appeal was pending since 2011, long before the applicant joined at Patna. On 30.11.2011 itself, the predecessor of the applicant received a letter from the office of CCIT, Patna (Annexure A-5), which reads as under:

“Sub.: Request for early hearing – Reg.

I am directed to forward herewith a copy of letter dated 17/11/2011 received from the Director, Ganga Carriers Pvt. Ltd., 314, Ashiana Towers, Exhibition Road, Patna-800 001 through which he has requested for early hearing and disposal of his appeal for the AY 2003-04 to 2008-09 as the Assessing Officer is pressing hard for collection.

In this connection, I am directed to request you to fix the case early. The brief detail of the cases are as follows:-

Sl. No.	Name & Address of the Assessee	Demand involved (Rs.)	A.Y.	Date of filing of appeal
1.	Ganga Carriers Pvt. Ltd., 314, Ashiana Towers, Exhibition Road, Patna	Rs.31,62,57,725/- (for AY 2003-04 to 2009-10)	2003-04 to 2008-09	15/09/2011

22. On 01.10.2012, the office of the CCIT addressed a letter (Annexure A-6), instructing the CIT (Appeals), Patna to bifurcate the appeals, based upon demand, i.e., Rs.1 crore and others, obviously for the purpose of early disposal of the high value appeals. It reads as under:

“Sub.: Disposal of appeal – regarding.

Please recall the review meeting of the Zonal Member wherein he has instructed that pendency and disposal in high demand appeal should be further bifurcated into demand over Rs.1 crore and others. Similarly, it was also instructed that the copy of quality order passed by you should be enclosed with the monthly D.O. to this office.

You are advised to keep these points in mind while sending your monthly D.O. starting from September onwards.

Please acknowledge the receipt of this letter.”

23. The applicant received letter dated 25.02.2013 (Annexure A-7) from the office of CCIT, Patna, wherein the disposal targets were fixed. It reads as under:

“Sub.: Central Action Plan for F.Y. 2012-13 for disposal of appeals by CsIT (Appeals) - regarding.

Ref.: Batch of Appellate Orders for the month of January, 2013.

I am directed to inform you that the annual target for disposal of appeals for F.Y.2012-13 was revised and was fixed as under:

Annual Terrace for Disposal of Appeals:

	Target for B-1	Target for B-2	Target for B-3	Total
CIT(A)-1, Patna + CIT(A) Muz.	168	214	0	382

However, a perusal of monthly disposal report for the month of January 2013 reveals that the disposal made by you in the month of January 2013 is as under:

	Disposal for B-1 (B1A+B1B+B4A)	Disposal for B-2	Disposal B-3	Disposal B-3 (B4B)
CIT(A)-1, Patna + CIT(A) Muz.	7	36	0	0

Further the disposal made by you during F.Y.2012-13 (up to January 2013) is as under:-

Total Disposal made upto 31.01.2013

	Disposal for B-1 (B1A+B1B+B4A)	Disposal for B-2	Disposal B-3	Disposal B-3 (B4B)
CIT(A)-1, Patna + CIT(A) Muz.	43	340	0	0

In the light of above I am directed to inform you that the 'High Demand Appeals' are the highest priority area for the CCIT as huge amount of revenue is blocked therein.

In this respect I am further directed to request you to kindly ensure that orders in all the 'High Demand Appeals' are passed by 15.03.2013 and that the orders are received by the A.Os. well in time so that the resulting demand may be collected or reduced as the case may be, within the current financial itself."

24. The appeal preferred by M/s GCPL was long pending, obviously because the predecessor of the applicant did not evince interest, or that the appellant itself was not cooperative. Taking note of the urgency explained by the superiors, i.e., CCIT, as well as the targets of disposal indicated in the correspondence, the applicant wanted to take up the hearing of the appeal of GCPL. From the letter dated 08.02.2013 (Annexure A-8), addressed by the applicant to the assessee, it becomes clear that M/s GCPL was not cooperating in disposal of the appeal. It reads as under:

"Sub: Appeals before CIT(A)-1, Patna for A.Yrs. 2003-04 and 2008-09 – reg.

Sir,

Please refer to your letter dated 17.11.2001 addressed to the Chief Commissioner of Income Tax (CCA), Patna requesting for giving appropriate direction to CIT(A)-1, Patna to hear and dispose off the above mentioned appeals out of turn as a huge demand of Rs.31.62 crores is pending.

Please also refer to your letter dated 14.11.2001 written to the CIT(A)-1, Patna again requesting for early fixation of appeals filed on 15.09.2011 for A.Yrs. 2003-04 to 2008-09.

On perusal of records it is seen that the appeal was first fixed up for hearing on 09.12.2011 vide this office letter dated 07.12.2011. In response to the same, a fortnight's time was sought to file year wise written submissions. The request was made not to treat the appellant as assessee in default and stay the impugned demand of Rs.31,62,57,729/- till disposal of the appeals.

The appeals were fixed for hearing on 20.12.2011 when again adjournment was sought for by your Authorized Representative on the grounds that the Director of the appellant company was ill and there were certain documents and information which had to be obtained from him. Request was made to re-fix the case after 20th January, 2012.

The appeals were re-fixed for hearing on 10.02.2012 vide this office letter dated 24.01.2012. Once again an adjournment was sought for by the authorized representative on the ground that certain documents and information had to be obtained from the appellant. Request was made to adjourn the appeals for four weeks.

Giving another opportunity, the appeals were re-fixed for hearing on 01.03.2012, when again, an adjournment was sought for by your Authorized Representative on the ground that certain documents and information had to be obtained from you. Request was made to adjourn the appeals and re-fix it after five weeks.

The appeals were once again fixed up for hearing on 24.05.2012 vide this office letter dated 02/05.03.2012. On the said date your Authorized Representative on the same ground that certain documents and information had still to be obtained from you sought another adjournment.

The appeals were once again fixed for hearing on 08.08.2012. Once again on the same ground that certain documents and information had to be obtained from you, your Authorized Representative requested for adjournment of appeals.

You will appreciate that the concerned appeals have been re-fixed on various occasions but your

Authorized Representative has so far sought adjournment on 6 occasions on the ground that documents and information still have to be obtained from you. The concerned appeals involve a tax demand of over Rs.31.62 crores. These are high demand appeals requiring expeditious disposal. Further your request to get the concerned appeals heard and disposed off out of turn is not in line with your conduct so far, during the appellate proceedings. In view of the fact that sufficient opportunity has been provided to you to make your submissions in respect of the concerned appeals, a last and final opportunity is being provided to you to appear before the undersigned on 19.02.2013 at 11.30 AM failing which it shall be construed that you have nothing to say in the concerned matters and the appeals pending before me will be adjudicated on the basis of facts and findings, details and documents and other material in the possession of the Department.”

25. With the efforts made by the applicant, the appeal could be taken up for hearing. Therefore, the very premise that the applicant had shown undue haste in deciding the appeal preferred by M/s GCPL, is without any basis and factually incorrect. On the other hand, there was pressure by the superiors to take up the appeal, for justifiable reasons.

26. Another limb of the charge was that the applicant entered into a “collusive arrangement” with Shri Chaman Lal Negi, the then ACIT and AO, in preparing a remand report within ten days. In this context, it is essential to take note of the procedure under the Act. Whenever an appeal is preferred, the

entire record is forwarded to the Assessing Authority for necessary steps at his end. In certain cases, the Assessing Officer himself can grant reliefs, if he finds strength in the grounds of appeal, or he may simply justify the order passed by him, and offer comments.

27. It is not as if the steps for procuring the remand reports from the AO in the appeal presented by M/s GCPL started only after the applicant joined at Patna, or, just before the appeal was taken up for hearing. Shri C. L. Negi, ACIT, functioning in the office of DGIT, Patna, addressed a letter dated 25.09.2012 (Annexure A-9) to the CIT (Central), Patna, in the context of submission of remand reports. The letter reads as under:

“Sub.:—High pendency of remand reports with the A.Os.—matter reg.

Kindly refer to the above.

I am directed to forward herewith a copy of the letter Memo No.CIT (A)-I/Pat/2012-13/735 dated 14.09.2012 received from the CIT (Appeal)-I, Patna on the captioned subject contents of which are self explanatory.

In this connection, I am further directed to request you to kindly direct the A.O.s of your charge to send the pending remand reports to the CIT (Appeal)-I, Patna urgently so that the appeal in the high demand case may be decided at the earliest.”

28. On finding that the remand report was not received as yet, the applicant addressed letter dated 13.03.2013 (Annexure A-10) to the Asstt./DCIT, Central Circle-1, Patna, with a request to make the same available in the case of M/s GCPL. It reads as under:

“Subject:- Appeal filed against the order of assessment u/s 153C for A.Y. 2003-04 to 2009-10 in the case of Ganga Carriers Pvt. Ltd., Ashiana Towers, Exhibition Road, Patna – calling Remand Report thereof – regarding.

Please find enclosed herewith written submissions with supporting documents/evidence, copies of cash books and ledgers for the assessment years 2003-04 to 2009-10 and consolidated submissions on account of disallowance u/s 40A(3) in order u/s 153C in A.Ys. 2005-06 to 2008-09 and 143(3) in A.Y. 2009-10 filed in this office on 13.03.2013 by the A.R. of the appellant in the above case. You are requested to comment on all the points raised by the A.R. of the appellant in the written submissions.

Your remand report on the issues raised in the written submissions should reach the undersigned on or before 19.03.2013 positively as these are high demand appeals which are required to be disposed off immediately within this month.”

It is important to note that the letter was not addressed to Shri C. L. Negi, or to the Assessing Officer. A copy of the same was marked to the DGIT (Inv.), Patna, and CIT (Central), Patna, with a request to expedite the remand report. Obviously because the matter was being pursued long before that, the

report was made available, and the applicant decided the appeal on 26.03.2013, after giving opportunity to both sides.

29. It, therefore, becomes clear that there was no correspondence between the applicant and Shri C. L. Negi in the context of procuring the remand reports. If this and the other steps, mentioned above, are taken into account, it becomes clear that what is stated in the charge memo is just on the basis of imagination.

30. A perusal of the record, on the two principal and important aspects mentioned above, clearly demonstrates that the entire exercise does not accord with the law laid down by the Hon'ble Supreme Court. The charge memo was based solely upon the imagination. It is fairly well known that if a person vested with the power to alter the legal status of another, permits his imagination to work, it may take him to a level, which he may not have imagined at all. The executive powers are required to be exercised on the basis of objective and verifiable material, and not on the basis of surmises, presumptions and imaginations.

31. The purpose of closely scrutinizing the disciplinary proceedings initiated against an officer with reference to his or

her discharge of *quasi judicial* functions, at the threshold, is to ensure that the officer is not subjected to unnecessary ordeal of facing the disciplinary proceedings, and to avoid the situation of the loss being caused to him or her; in case the very initiation is found to be untenable. The case on hand warrants and justifies such scrutiny.

32. We, therefore, allow the OA and set aside the impugned charge memorandum. It is represented that the case of the applicant for promotion to the post of CCIT was considered but sealed cover procedure was adopted on account of issuance of the charge memorandum. In view of the quashing of the charge memorandum, the sealed cover shall be opened, and in case the DPC found her fit and promoted, she shall be extended the benefit of promotion with effect from the date on which her junior was promoted, with consequential benefits. There shall be no order as to costs.

Pending MAs also stand disposed of.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/