

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on July 01, 2013
Judgment Delivered on August 05, 2013

+ W.P.(C) 3209/2012

U.O.I AND ORS.

..... Petitioners

Represented by: Mr.R.V Sinha, Mr.R.N.
Singh and Mr.A.S.
Singh, Advocates

versus

AJIT KUMAR SINGH & ORS.

..... Respondents

Represented by: Mr.Sanjeev Sindhvani,
Sr.Advocate with
Mr.Anshuman Jain,
Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present writ petition is filed by the petitioners challenging the order dated April 20, 2010 passed by the Central Administrative Tribunal in Original Application No.1000/2009, whereby the Tribunal has allowed the said Original Application and set aside the charge-sheet, including order of appointment of Inquiry Officer and the order dated February 27, 2009 whereby the respondent No.1 was transferred from Range No.17 to ITAT.

2. The respondent No.1 is an Indian Revenue Service Officer. At present he is working as Additional Commissioner of Income

Tax. A memorandum dated October 20, 2008 was issued to him wherein 5 Articles of Charges were framed against him.

3. We reproduced hereunder, the Articles of Charges framed against the respondent No.1.

Article I:

That Shri Ajit Kumar Singh, while functioning as Deputy Commissioner of Income-tax, Central Circle 1(3), Ahmedabad, committed irregularities as indicated below, in the course of passing the set aside assessment order on 28.3.2002 in the case of Shri Nitin P. Shah alias Modi, Ahmedabad, for assessment year 1997-98 –

(i) Although in terms of express directions of the CIT (Appeals), he was required to adjudicate only on the taxability of a sum of Rs.67.75 lakh, Shri Ajit Kumar Singh, acting beyond his jurisdiction and flagrant violation of system and procedure thereby causing undue harassment to the assessee, held as taxable a sum of Rs.1.37 crores which the assessee had disclosed under the Voluntary Disclosure of Income Scheme of 1997 (VDIS) and in respect of which the Commissioner of Income-tax had issued a certificate.

(ii) Having, thus held a sum of Rs.1.37 crores as taxable, Shri Ajit Kumar Singh acting beyond his jurisdiction and in flagrant violation of system and procedure thereby causing undue harassment to the assessee, further held that a sum of Rs.67.75 lakh will be separately assessable in independent proceedings under section 158BD of the I.T. Act and pursuant thereto issued a notice to the assessee although neither the CIT (Appeals)'s direction

empowered him to do so nor the stipulated condition of satisfaction of the assessing officer of the searched person was met.

(iii) Although it was unnecessary and irrelevant on the facts of the case, Shri Ajit Kumar Singh, acting beyond his jurisdiction and displaying an attitude of insubordination to and confrontation with the authorities under whose control and directions he is required to function, raised, discussed and commented upon issues on which the Central Board of Direct Taxes had already issued clarification under the Voluntary Disclosure of Income Scheme of 1997.

By his aforesaid acts, Shri Ajit Kumar Singh failed to maintain integrity and devotion to duty and 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 Shri Ajit Kumar Singh, while functioning as Deputy Commissioner of Income-tax, Central Circle 1(3), Ahmedbad committed irregularities as indicated below in the course of passing the reassessment orders for the relevant block period on 04.03.2002 in the case of M/s. Mark Leasing & Finance Ltd., Ahmedabad, and Shri Harising Padamsing Champavat, Ahmedabad –

(i) Shri Ajit Kumar Singh, in flagrant violation of system and procedure, did not procure the approval of the Commissioner of Income Tax, as required under the statutory provisions of section 158 BG of the Income Tax Act, before passing the above orders.

(ii) *He did not make enquiry in terms of direction issued by the Income Tax Appellate Tribunal in its order dated 08.10.1999 before passing the above orders.*

(iii) *Though the orders were passed much later by him, Shri Ajit Kumar Singh indicated the date of order in both the cases as 04.03.2002 with a view to subverting the common petition made by the above named two assesseees before the Addl. Commissioner of Income Tax on 08.03.2002 solicitation issuance of directions to Shri Ajit Kumar Singh.*

By his aforesaid acts, Shri Ajit Kumar Singh failed to maintain integrity and devotion to duty and 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 Shri Ajit Kumar Singh, while functioning as Deputy Commissioner of Income-tax, Central Circle 1(3), Ahmedbad committed irregularities in the form of flagrant violation of system and procedure by antedating the assessment order to 15.03.2002 in the case of M/s Shree Araveli Finlease Ltd., Ahmedabad for A.Y. 1999-2000 in order to subvert the assessee's application filed on 18.03.2002 before the addl. Commissioner of Income Tax solicitating issuance of directions to Shri Singh u/s 144A of the I.T Act.

By his aforesaid acts, Shri Ajit Kumar Singh failed to maintain integrity and devotion to duty and 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 Shri Ajit Kumar Singh, while functioning as Deputy Commissioner of Income-tax, Central Circle 1(3), Ahmedbad, committed irregularities in finalising the assessment, prematurely on 15.3.2002 in the case of M/s Shree Araveli Finlease Ltd., Ahmedabad for A.Y. 1999-2000 without waiting for the enquiry report solicited by himself from the Deputy Director of Income Tax, Udaipur, latest by 27.3.2002.

By his aforesaid acts, Shri Ajit Kumar Singh failed to maintain integrity and devotion to duty and 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 Shri Ajit Kumar Singh, while functioning as Deputy Commissioner of Income-tax, Central Circle 1(3), Ahmedbad, failed to do his duty, displayed insubordination and utter lack of respect towards his superiors through language and tenor his communication dated 11.04.2002 addressed to the Addl. Commissioner of Income Tax pursuant to Commissioner of Income Tax requisition of Shri Singh's explanation in connection with assessment made in the case of Shri Nitin P.Shah for of A.Y. 1997-98.

By his aforesaid acts, Shri Ajit Kumar Singh failed to maintain integrity and devotion to duty and 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.

4. The respondent No.1 submitted his reply to the charge-sheet vide his letter dated November 07, 2008. In the said letter the

respondent No.1 had stated that to enable him to prepare a written statement of defence, inspection of all the documents referred to and relied upon in the charge-sheet be given to him. The same was followed by further letters dated January 06, 2009, January 12, 2009 and January 20, 2009. Suffice would it be to state that the requirement under the rules is that a charged officer is required to deny or admit the charge(s) on receipt of the charge-sheet. Be that as it may the Inquiry Officer was appointed on January 20, 2009. After a period of one month, the petitioners vide order dated February 27, 2009 transferred the respondent No.1 to the Income Tax Appellate Tribunal.

5. The respondent No.1 filed Original Application No.1000/2009 before the Tribunal. The case of the respondent No.1 before the Tribunal was that he was discharging quasi judicial functions including assessments under Income Tax Act, Wealth Tax Act, Interest Tax Act etc. The assessments which are the subject matter of the charge-sheet have been issued with the mala-fide intention. His allegations of mala fide were directed against one Mr.P.L.Roongta who was the then Director General of Income Tax (Investigation), Ahmedabad. Mr.P.L.Roongta was impleaded as respondent No.2. According to him some frivolous complaints were made in which respondent No.2 has a role. According to him on his representation in the year 2006 Member (Personnel) CBDT and the then CVO directed a detailed inquiry in the issue which resulted in a finding that respondent No.1 has no role to play and has not committed any misconduct. According to him it was at that stage that anonymous complaint against him was filed before the Finance

Minister which was acted upon and a charge-sheet was issued to him.

6. The petitioners have contested the Original Application by inter-alia stating that the respondent No.1 while functioning as Deputy Commissioner of Income Tax has acted beyond his jurisdiction in holding sum declared by the assessee under the VDIS and also accepted by the Commissioner, Income Tax as taxable; displayed an attitude of insubordination and disrespect towards his superiors; commented upon issues on which the Central Board of Direct Taxes had already issued clarification; did not procure the approval of the Commissioner of Income Tax as required under the statutory provisions of Section 158 BG of the Income Tax Act before passing the block reassessment orders and antedated assessment orders in order to subvert the assessee's applications filed before the Additional Commissioner of Income Tax soliciting issuance of directions to him under Section 144A.

7. The Tribunal after considering the rival contentions was of the view that the earlier approval of the Finance Minister dated February 14, 2006 has been assumed by the respondents and whereby the action of issuance of charge-sheet in terms of approval dated February 14, 2006 held to be bad. The Tribunal further holds that the scope of judicial review in respect of disciplinary proceedings initiated against officer discharging quasi judicial authority is no more resintegra on the basis of the judgment of the Supreme Court in (2006) 5 SCC 680 Union of India vs. Duli Chand and when the actions of the respondent No.1 have been defended upto the Supreme Court, the petitioners cannot approbate and

reprobate simultaneously by alleging misconduct against the respondent No.1 and ultimately the Tribunal held unless the case of respondent No.1 falls in the categories enumerated by the Supreme Court in (1993) 2 SCC 56 Union of India vs. K.K.Dhawan, the disciplinary proceedings are contrary to law and cannot be countenanced.

8. The petitioners being aggrieved with the impugned order dated April 20, 2010 have filed the present petition under Article 226 of the Constitution of India.

9. During the hearing before us the learned counsel for the petitioners would submit that the Tribunal committed an illegality in quashing the charge-sheet issued against respondent No.1 at the very threshold. According to him it is settled law that the Tribunal or Court cannot interfere at the threshold. According to him from the charges and imputation it is clear that the respondent has committed a mis-conduct. He would rely on the judgment of the Supreme Court reported as (1994) 3 SCC 357 Union of India vs. Upendra Singh.

10. That apart he would state that the Supreme Court in the case reported (1993) 2 SCC 56 Union of India vs. K.K.Dhawan has held that the discharge of quasi judicial functions can be subject matter of a disciplinary action if it falls in one the cases enumerated therein by the Supreme Court. He relies upon the judgments reported as (1994) 3 SCC 357 U.O.I & Ors. vs. Upendra Singh, (2006) 12 SCC 28 U.O.I vs. Kunisetty Satyanarayana, (2006) 130 DLT 235 MCD vs. R.V.Bansal, (1997) 11 SCC 368 State of Punjab vs. Ajit Singh, (1996) 11 SCC 498 Dy. Inspector General of Police vs.

K.S.Swaminathan, (1993) 24 ATC 1 U.O.I vs. K.K.Dhawan, (2006) 5 SCC 680 U.O.I vs. Dulichand, (2005) 6 SCC 106 U.O.I. vs. Narender Singh and (2007) 8 SCC 212 Chief Commercial Mananger, South Central Railway vs. G.Ratnam in support of his contentions challenging the conclusion of the Tribunal.

11. Per contra, the learned Senior Counsel for respondent No.1 submits that the perusal of the charges and the imputations in support of the charges would show that the same relate to his functioning as an Assessing Officer discharging quasi judicial function, with respect to certain assessment orders passed by him relating to some persons/ companies. The same cannot be subject matter of a charge-sheet. He would further submit that if an officer is performing judicial or quasi judicial function disciplinary action should be taken with utmost caution and with proper application of mind. In the present case, he would submit initially the Central Vigilance Commission has looked into the complaints made against him and did not find anything against him. He would further submit that the DIT (Vigilance) gave a report in his favour. So the approval given by the Finance Minister/Disciplinary Authority was not proper as the same was without considering in perspective the law and the facts. He relies upon the judgments reported as (2007) 4 SCC 247 Ramesh Chander Singh vs. High Court of Allahabad & Anr., (2007) 4 SCC 568 Inspector Prem Chand vs. Govt. of NCT of Delhi, (2006) 5 SCC 680 U.O.I & Ors. vs. Duli Chand, (2001) VI AD SC 687 P.C.Joshi vs. State of U.P. & Ors., (1999) 7 SCC 409 Zunjarrao Bhikaji Nagarkar vs. U.O.I. & Ors., (1993) 2 SCC 56 K.K.Dhawan vs. U.O.I. order dated November 24, 2010 passed by

this Court in W.P.(C) 5013/2010 UOI & Ors. vs. Harsh Vardhan Chauhan, order dated March 20, 2009 in W.P.(C) 7054/2009 UOI & Ors. vs. Arindam Lahiri.

12. Written submissions have also been considered by us.

13. The question which falls for our consideration is whether the Tribunal was justified in quashing the charge-sheet at the threshold by holding that the procedure has been curtailed and issue prejudged and further whether charge-sheet could have been issued to the respondent No.1 if the charges relate to the assessment orders passed by him in performing quasi judicial function.

14. We first deal with the first issue. The facts relevant are, the Central Vigilance Commission in its advise dated December 02, 2002 finds no vigilance angle in the matter, however it opined that if any specific instances of official misconduct alleged by the two officers i.e. respondent nos.1 and 2, the same be investigated by the CVO and brought up before the Commission at appropriate stage. The Chairman CBDT gave his approval to refer the matter to the CVC for re-consideration of its advise. The CVC opined that the version of the officer be obtained and thereafter the matter be referred to it. Despite many opportunities the respondent No.1 did not submit his version. The DIT (Vigilance) sent his report which were sent to CVC with recommendation for initiation of major penalty proceedings. The CVC in its advise dated December 29, 2005 advised major penalty proceedings against the respondent No.1 and the Finance Minister as the Disciplinary Authority gave his approval for the same on February 14, 2006. The respondent No.1, in the mean time submitted a representation dated February

10, 2006 addressed to the Finance Minister. The representation was sent to the office of Member (P&V) with a direction to get the same examined. On examination by the DIT (Vigilance) reports on different dates were submitted and the last one being on April 09, 2008. Thereafter the Finance Minister/Disciplinary Authority approved the charge-sheet on July 21, 2008 which was issued to the respondent on October 20, 2008.

15. The dates reveal that after the Disciplinary Authority had approved the charge-sheet on July 21, 2008, the charge-sheet was issued to respondent No.1. Regrettably the Tribunal relies upon an earlier approval of February 14, 2006 for initiation of major penalty proceedings against the respondent No.1, to set aside the same. There is no requirement in the rules that the views of the employee concerned are to be ascertained before a charge-sheet is issued. The decision of the Disciplinary Authority should be meaningful, based on relevant material on record. A view in favour/against the employee in an internal inquiry/advice by Commission would only be a necessary input for the Disciplinary Authority for forming an opinion. If the decision making process demonstrates application of mind by the Disciplinary Authority then such a decision can't be interfered with. The Tribunal erred in setting aside the proceedings on that ground. The Supreme Court in its opinion reported as Upendra Singh's case (supra) has in para Nos.6 & 7 held as under:

Para No.6.

In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other

irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

Para No.7

Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

16. In so far as issue, whether the charge sheet could have been issued to the respondent No.1, if the charges relates to quasi judicial function has come up for consideration before the Supreme Court and this Court on many occasions. The legal position is as under:

Legal Position

17. It is now well settled principle of law that an officer taking decision in exercise of quasi judicial function is not immune from disciplinary proceedings. However, it is only the conduct of the officer in discharge of his duties and not correctness or legality of his decision which could be the subject matter of the disciplinary proceedings. The Supreme Court in K.K.Dhawan's case (supra) has laid down, when a disciplinary proceedings can be initiated against an officer who is discharging quasi judicial function. The same are enumerated as under:

(i) *Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion of 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, the bribe may be.*

18. The Supreme Court has also in the said judgment vide para No.29 has observed as under:

Para No.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.”

19. In its opinion reported as (1999) 7 SCC 409 Zunjarro Bhikaji Nagarkar vs. Union of India & Ors., the Supreme Court has held as under:

“40. XXXXXXXXXXXXXXXXXXXX

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 penalty, the officer has favoured 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. Records in the present case do not show that 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 penalty. He may have exercised his jurisdiction wrongly 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.

42. Initiation of disciplinary proceedings against an officer cannot take place on 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 exercise of its power directed filing of appeal against the order-in-original passed by the appellant could not be enough to proceed against him. 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 independent functioning of quasi-judicial officers like the appellant. Misconduct, in sum and substance, is sought to be inferred in the present case from the fact that the appellant committed an error of law. The charge-sheet on the face of it, does not proceed on any legal premise and is thus liable to be quashed. To maintain a 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 quasi-judicial order. Since nothing of the sort is alleged herein, the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will 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 constant threat of disciplinary proceedings."

20. In the judgment reported as (2006) 5 SCC 680 Union of India and Ors. vs. Duli Chand, the Supreme Court in para Nos.5 to 9 has held as under:

5. The law on the subject was considered in extenso in the three-Judge Bench decision of Union of India vs. K.K.Dhawan wherein it was noted that the view that no disciplinary action could be initiated against an officer in respect of judicial or quasi-judicial functions was wrong. It was further said that the officer who exercises judicial or quasi-judicial powers acting negligently or recklessly could be proceeded against by way of disciplinary action. The Court listed six instances when such action could be taken: (SCC p.67, para 28)

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;*
- (ii) If there is prima facie material to show recklessness or misconduct in the discharging 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'.*

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 was considered by this Court and followed in Govt. Of T.N. vs. K.N.Ramamurthy. 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 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 was contrary to the view expressed in K.K.Dhawan case. The decision in K.K.Dhawan being that of a larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld. There will be no order as to costs.

21. Further the Supreme Court in the case reported as (2007) 4 SCC 247 Ramesh Chander Singh vs. High Court of Allahabad and Anr. has held as under:

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.

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17. In Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) SCC 409, this Court held that wrong exercise of jurisdiction by a quasi judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the Judicial Officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by

virtue of its power under Art. 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level.

22. In the case reported as (2007) 4 SCC 566 Inspector Prem Chand vs. Govt. of NCT of Delhi & Ors. the Supreme Court has held as under:

15. A finding of fact was arrived at that the accused did not make demand of any amount from the complainant and thus no case has been made out against him. This Court in Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors., [1999 (7) SCC 409], has categorically held:

"Initiation of disciplinary proceedings against an officer cannot take place on 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 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."

23. This Court in Writ Petition (Civil) 7054/2009 case titled Union of India & Ors. vs. Arindam Lahiri decided on March 20,

2009 has after referring to the aforesaid judgments of the Supreme Court in para Nos.35 & 36 has held as under:

35. Submission of the department, on the other hand, was that such a blanket immunity cannot be available even in respect of a Government officer discharging quasi-judicial functions and if his action results in any negligence thereby causing loss to the State, the same can be recovered as provided under the relevant Service Rules. The High Court found that judgment of the CAT was solely based on Nagarkar's case (supra). In this context, question arose as to whether Nagarkar's case (supra) was contrary to the view expressed by the Supreme Court in K.K. Dhawan (supra), as noted in Duli Chand (supra). After taking note of the observations in Duli Chand that Nagarkar's case was contrary to the view expressed in K.K. Dhawan, the High Court referred to subsequent judgments in Ramesh Chander Singh (supra) and Inspector Prem Chand (supra), wherein Nagarkar's case was approved and resolved the dactylonomy in the following manner :-

"14. 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.

15. 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 Ramesh 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."

Applying the aforesaid test in the case at hand, the Madras High Court affirmed the view of the Tribunal in the following manner:-

"16. 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."

36. We are in agreement with the aforesaid view of the Madras High Court which has, in our respectful submission, correctly culled out the principle on the basis of all the aforesaid judgments in para 15 above.

24. This Court further in Writ Petition (Civil) No.5013/2010 case titled as Union of India & Ors. vs. Harsha Vardhan Chauhan has explicitly culled out on the basis of judgments referred above the scope of departmental action against an officer who discharges quasi judicial functions.

25. From the above it is clear that the grounds enumerated by the Supreme Court in K.K.Dhawan's case (supra) are to be applied when departmental action is contemplated against an officer discharging quasi judicial function.

26. Now our task is to see whether the grounds laid down by the Supreme Court and reiterated by this Court gets attracted in the facts of this case. What is of relevance is not the correctness or legality of the assessment orders passed by the respondent No.1 but the conduct of the respondent No.1 in discharge of his duties as an officer. We may note that the Tribunal has quashed the proceedings at the threshold. The inquiry was not proceeded with, so no final order was passed.

27. The Articles of Charges I to V imputes certain acts on the part of respondent No.1. The charges and the defence of the respondent No.1 are tabulated as under:

Article I	Defence taken by respondent No.1
(1) Even though he was to assess the tax liability of ₹67.75 Lakh, in terms of order of CIT (appeals), he held taxable a sum of ₹1.37 Crores which the assessee had disclosed under VDIS. (2) He held the amount of ₹67.75 Lakh will be separately assessable in Independent proceedings under Section 158 BD of the Income Tax Act.	Assessment order passed by the respondent No.1 defended before the Income Tax Appellate Tribunal Gujrat High Court Supreme Court The entire draft order discussed and approved with/by the Addl. CIT u/s 144A The legal view is approved by the Department's Standing Counsel

(3) He acting beyond jurisdiction and displaying an attitude of insubordination and confrontation commented on issues on which the CBDT has already issued clarification under VDIS 1997.	No insubordination in quasi-judicial decisions. The only issue is whether the clarification and Member's letter is binding. The Clarification is not binding because unlike section 119 of the IT Act, the VDIS does not have provision enabling the CBDT/ its Member to issue clarification as advised by the Standing Counsel in his opinion. Issue no longer res integra (Hemlathaa Gagua v. CIT (2003) 259 ITR 1 (SC); Member's opinion in reply to a communication from assessee not binding on the assessing officer as held in J.K.Synthetics [1972] 83 ITR 335 (SC); A similar opinion by Sh. Batabayal was held not binding on the Income Tax authorities by Calcutta HC in Nilesh Hemani v. Commissioner of Income tax [1999] 239 ITR 517 (Cal)
Article II (1) He did not obtain the approval of the Commissioner of Income Tax as required under the provisions of Section 158 BG of the Income Tax Act before passing the assessment orders. (2) He did not make enquiries	Approval was already taken by the preceding Assessing Officer, while passing Original assessment order vide CIT's letters F.No.CIT-1/DCSR-1/Elecon/BA/SG-4-96-97 dated 28.9.96 and 28.01.97. The matter remanded by ITAT

in terms of directions issued by the Income Tax Appellate Tribunal in its order dated October 08, 1999. (3) Though the orders were passed much later, he indicated the date of order in both the cases as March 04, 2002 with a view to subverting the common petition made by the assessee before Addl. Commissioner of IT on March 08, 2002.	on limited issue of verification of Share Capital. There was no practice of seeking second time approval of CIT in the remand proceeding as even other Assessing officers also did not obtain the Approval of CIT in remand proceedings. Even a senior AO, i.e, JCIT. S.R.-3, did not take approval in case of Dr.S.N.Harshe in the remand proceedings. Assessment order defended by the Department before ITAT by appointing Sh.Jagdeo, an officer of the Rank of CIT No specific enquiry ordered by ITAT. ITAT merely required adequate opportunities to be given and observed that the Assessing Officer 'would be at liberty to make the necessary enquiries'. This is just an unilateral inference. There is no evidence to even remotely suggest that the order was passed later and not on 04.03.2002.
Article III & IV (1) He ante dated the assessment order dated 15.03.2002 in the case M/s Shree Araveli Finlease Ltd. in order to subvert the assessee application filed on 18.03.2002 before Addl. Commissioner of IT for	This is just an unilateral and pervsere inference which is based on a letter dated 18.03.2002 written by Respondent No.1. This letter is not relevant for assessment. This was pertaining

issuance of directions to him u/s 144A of IT Act. (2) He finalized the assessment prematurely on 15.03.2002 in the case M/s Shree Araveli Finlease Ltd. without waiting for the enquiry report solicited by him from Dy. Director of Income Tax Udaipur latest by 27.03.2002.	to launching of prosecution u/s 197/198 r.w.s. 477A of IPC, for which an enquiry was directed by Asst. Director (Prosecution). Perverse inference as the letter dated 18.03.2002 not relevant for assessment. This was pertaining to launching of prosecution u/s 197/198 r.w.s. 477A of IPC, for which an enquiry was directed by Asst. Director (Prosecution) On the merits of the Assessment, CIT(A) confirmed two additions of Rs.1.81 Crores and Rs.3.71 Lakhs and deleted two additions of Rs.41.37 Lakhs and Rs.1.73 Crores. The Department filed an appeal before ITAT against the deletions. ITAT confirmed the additions of RS.41.37 Lakhs and remanded the issue of addition of RS.1.73 crores for fresh adjudication.
Article V He displayed insubordination and utter lack of respect towards his supervisors through language and tenor of his communication dated 11.04.2002 addressed to the Addl. Commissioner of Income Tax pursuant to Commissioner of Income Tax requisition of Shri Singh explanation in connection with assessment made with case Shri Nitin P.Shah for A4-	This, too, is a perverse inference. Letter dated 11.04.2002 is only a request for certain details to enable the respondent to file his reply to CIT's requisition of Explanation. The letter is just a statement of fact duly supported by documentary evidence.

28. Analysis of Charges:

Article I

In so far Article I is concerned, it is ex-facie clear that the subject matter of the charge relates to the correctness or legality of the assessment order passed by the respondent No.1. The assessment order was defended by the department till the Supreme Court. They cannot make the assessment order a matter of charge against the respondent No.1. Hence the same is not sustainable and accordingly we set aside the said charge.

Article II to V

In so far as Articles II to V are concerned, the Tribunal had not bothered to test and co-relate the principles/grounds laid down by the Supreme Court in K.K.Dhawan's case (supra) with the facts constituting these charges. This is a grave illegality.

We are of the view that the Tribunal must consider the facts constituting the Articles II to V, relates to the correctness or legality of the assessment orders or it reflects the conduct of the respondent No.1 in discharge of his duties as an officer.

31. Accordingly we remand the case to the Tribunal to adjudicate the sustainability of Articles II to V framed in terms of Memorandum dated October 20, 2008.

32. One aspect which requires mention here is that the Tribunal has quashed the order dated February 27, 2009 whereby the respondent No.1 was transferred from Range 17 to ITAT. There is no finding/reasoning for granting such a relief. It is seen from the Original Application except one ground that the said order is

motivated and against the settled principles of law no foundation has been laid for seeking quashing of the said order. The respondent No.1 being a All India Service Officer has a liability to serve in any part of the country. The order of the Tribunal is liable to be set aside in that regard.

33. We allow the writ petition to the extent stated above and remand the case back to the Tribunal by reviving the Original Application No.1000/2009 with a direction to decide afresh the sustainability of charges II to V framed against respondent No.1 in terms of Memorandum dated October 20, 2008, on the basis of principles/grounds propounded by the Supreme Court in K.K.Dhawan's case (supra) as expeditiously as possible.

34. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 05, 2013