

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO. 10119 OF 2015

Shri Nai Pal Singh
Age 56 years,
working as Commissioner of Income Tax
Departmental Representative (ITAT)-2,
Residing at 102, Ritika Apartments,
9th Gulmohar Cross Road,
JVPD Scheme,
Mumbai 400 049.

Petitioner

Versus

1. Union of India
Through the Secretary (Revenue)
Ministry of Finance
Department of Revenue
North Block,
New Delhi 110 001.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi 110 001.

Respondents

Mr. P.K. Dhakephalkar, Senior Counsel instructed by Mr. Sandeep V. Marne, advocate for the petitioner.
Mr. Pradeep S. Jetly & Ms. Neeta Masurkar, advocates for respondents.

WITH
WRIT PETITION NO. 10120 OF 2015

Shri Nai Pal Singh
Age 56 years,
working as Commissioner of Income Tax
Departmental Representative (ITAT)-2,
Residing at 102, Ritika Apartments,
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Mr. P.K. Dhakephalkar, Senior Counsel i/by Mr. Sandeep V. Marne, advocate for the petitioner.
Mr. Pradeep S. Jetly & Ms. Neeta Masurkar, advocates for respondents.

CORAM : R.M.BORDE AND

A.S. GADKARI, JJ.

RESERVED ON : 12th JANUARY, 2017

PRONOUNCED ON : 20th SEPTEMBER, 2017

JUDGMENT : (Per R.M. Borde, J.)

1 The petitioner, an employee of Income Tax Department, is praying for issuance of writ of certiorari or any other writ, order or certiorari in the nature of writ of certiorari for quashing the order dated 16th July, 2015, passed by the Central Administrative, Mumbai in Original Application No.284 of 2014 along with Memorandum of Charge Sheet dated 14.03.2014; and is also claiming all consequential benefits. The petitioner is also objecting to the order passed by the Central Administrative Tribunal, Mumbai in identical matter bearing Original Application No.285 of 2014, decided on 16th July, 2015 along with

Memorandum of Charge Sheet of the same date i.e. 14.03.2014; and is also praying for grant of all consequential benefits.

2 Petitioner belongs to 1983 batch of Indian Revenue Service and is currently holding the post of Commissioner of Income Tax. Between the years 1994 and 1996, petitioner was posted as Deputy Commissioner of Income Tax, Special Range-3 and Special Range-1, Nasik. He passed several assessment orders relating to assessment years 1992-93 and 1993-94. The CIT randomly selected 100 cases wherein orders were passed by the petitioner for regular inspection. The cases taken up by the Commissioner of Income Tax for regular inspection are different from the cases taken up for vigilance inspection. On the basis of inspection in six cases, the Commissioner of Income Tax recorded adverse entries in the ACR of the petitioner for the year 1995-96 and awarded grading "inadequate". The adverse entries in the Confidential Records of the petitioner, during the year 1995-96 were communicated to him by the Chief Commissioner of Income Tax, Pune.

3 The petitioner made representation seeking expunction of adverse entries in the ACR and for upgradation of the same. The representation tendered by the petitioner was considered favourably and the competent authority i.e. Member, Central Board of Direct Taxes, issued directions expunging adverse remarks in four columns out of six columns in the ACR for the year 1995-96 and maintained adverse entries against two columns.

4 The petitioner, being aggrieved by the order of retention of adverse entries in two columns, tendered a representation to the Hon'ble President of India on 18.06.1998. It was communicated to the petitioner on 30.10.1998 by the Union of India that the adverse entries made in column 20 of Part-III and Column 3 of Part V, recorded in the ACR for the year 1995-96, have been expunged. There were no steps taken during the years 1998 to 2014 and according to the petitioner, when he became eligible for promotion to the post of Principal Commissioner of Income Tax, at the relevant time, Respondent No.1 issued a Memorandum of Charge under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The charges levelled against the petitioner are in respect of irregularities in assessment orders passed by him in six cases while he was posted as Deputy Commissioner of Income Tax, Nasik, during the year 1994-95.

5 It is the contention of the petitioner that three cases out of six cases, which were referred to in the Memorandum of Charge, formed basis of recording adverse entries in his ACR and those adverse entries were expunged considering the representation made by the petitioner. The petitioner objects to the maintainability of the Memorandum of Charge on several grounds including delay in issuing the Memorandum of Charge. The petitioner is raising exception to the Memorandum of Charge wherein it has been alleged that the petitioner, while recording assessment in six cases, has contravened the provisions of Rule 3(1)(ii) of Central Civil Services (Conduct) Rules, 1964. The aforesaid Memorandum of Charge is subject matter of Writ Petition No.10119 of 2015.

6 Another charge sheet issued on the same day i.e. 14.03.2014 forms subject matter of Writ Petition no.10120 of 2015. The charge in the second charge sheet is in respect of violation of Rule 3(1)(i), (ii) and (iii) of Central Civil Services (Conduct) Rules 1964.

7 The petitioner was posted as Commissioner of Income Tax (Appeals)-IV, Chennai and was also entrusted with the additional charge of Commissioner of Income Tax (Appeals)-X, Chennai, by an order dated 24.07.2006 by the Chief Commissioner of Income-Tax, Chennai. The additional charge of the post of Commissioner of Income Tax (Appeals)-X comprises, in addition to the regular charge as Commissioner Income Tax (Appeals),IV, Chennai, whereunder certain assigned appeals were entrusted in view of Notification bearing No.8 of 2005 dated 02.12.2005 by Chief Commissioner of Income Tax, Chennai. The Central Board of Direct Taxes wanted to create additional post of CIT, Delhi and as such, diverted the post of Commissioner of Income Tax (Appeals)-X, Chennai to Delhi and re-designated it as CIT, DPER, Delhi, by an order dated 25.09.2006.

8 It is the contention of the petitioner that on diversion of the post of CIT (A)-X, Chennai, Chief Commissioner of Income Tax, Chennai failed to pass order for transfer of cases from the petitioner. Initially the order was passed for transfer of only territorial cases relating to Chennai and later, by specific order, the Central charge cases pertaining to CIT (A)-X, Chennai, were retained with the petitioner. In the year 2007, an assessee by

name Mr.Rakesh Sarin had presented appeal raising challenge to the block assessment order. The assessee also presented writ petition before the learned Single Judge of the Madras High Court challenging notices for block assessment issued by the Assessing Officer. In the writ petition, an interim order was passed by the learned Single Judge of the Madras High Court directing that the proceedings in the appeal pending before the petitioner may go on, but the order passed by the petitioner should not be given effect to. Since there was no impediment in deciding the appeals, according to the petitioner, he decided the same and directed the Assessing Officer not to enforce demand against the assessee. The order passed by the petitioner was challenged by the Department by presenting an appeal to the Income Tax Appellate Tribunal, Chennai. In the meantime, the learned Single Judge of the Madras High Court allowed the writ petition filed by the assessee and held that the notices issued by the Assessing Officer for block assessment were illegal. After decision of the learned Single Judge of the Madras High Court, the assessee produced the said order before the ITAT, Chennai. Dealing with the appeal presented by the department and considering the order passed by learned Single Judge of the Madras High Court quashing notices in respect of block assessment, the appellate authority dismissed the appeals presented by the department. The department presented an appeal challenging the order passed by the learned Single Judge of the Madras High Court before the Division Bench of the Madras High Court. Appeal presented by the department came to be allowed and the Division Bench of the Madras High Court, by its judgment and order dated 24.09.2013, quashed the order passed by the learned Single Judge. The department also filed an appeal

against the order passed by the ITAT dismissing the appeal presented by the department before the Madras High Court, which was also allowed and the matters were remitted back to the Tribunal for decision on merit.

9 In the meanwhile, by notice dated 05.06.2012, the Directorate of Income Tax (Vigilance), Chennai, called upon the petitioner to submit his explanation in respect of disposal of appeals by him in his capacity as Commissioner of Income Tax (Appeals). The petitioner requested for supply of certain documents which were not supplied nor he was permitted inspection of appeal record. On 14.03.2014, memorandum of charge sheet came to be issued against the petitioner alleging various deficiencies in the order passed by him on 04.01.2007 while disposing of appeal presented by Mr.Rakesh Sarin. The petitioner presented reply to the charge sheet questioning its maintainability. The petitioner also objected to the charge sheet by presenting Original Application No.285 of 2014. The learned Tribunal, by an order dated 16.07.2015, was pleased to dismiss both the Original Applications presented by the petitioner objecting to two different Memorandums of Charge served upon him by the department.

10 The petitioner has objected to the Memorandums of Charge in both the matters mainly on the ground of delay in issuing the Memorandums of Charge. So far as first Memorandum of Charge, forming subject matter of Writ Petition No.10119 of 2015 is concerned, it refers to the assessment years 1992-93 and 1993-94, whereas, the charge sheet has been served in the year 2014

almost after twenty years from the date of passing of the assessment orders by the petitioner. In the years 1992-93 and 1993-94, the petitioner was functioning as Deputy Commissioner of Income Tax and thereafter in due course, he earned promotion as a Commissioner of Income Tax and while further promotion to the post of Principal Commissioner of Income Tax was within contemplation, instant Memorandums of Charge have been served upon the petitioner.

11 It is contended by the petitioner that out of six cases referred to in the charge sheet, three cases were subject matter of recording of adverse entries in the ACR. The petitioner objected to the adverse entries in the ACR recorded by the superiors and the objection of the petitioner was upheld and the adverse entries were directed to be expunged. So far as remaining three cases are concerned, the charge is founded on the interpretation of provisions of Income Tax Act, which are amenable to different interpretations. In the Memorandum of Charge, it is alleged that the petitioner has not maintained devotion to the duty while issuing assessment orders in six cases. The assessment orders were recorded in the year 1992-93 and 1993-94, which cannot be a matter of departmental enquiry and petitioner cannot be charged after lapse of about twenty years.

12 So far as second Memorandum of Charge is concerned, it relates to the orders passed by the petitioner in his capacity as Commissioner of Income Tax (Appeals) relating to assessee Mr. Rakesh Sarin. The charge is not sustainable on the ground of delay. The petitioner decided the appeals in the year 2007,

whereas, charge sheet has been issued almost after seven years i.e. in the year 2014. One of the objection raised by the department is in respect of jurisdiction of the petitioner to decide the appeals. It must be taken note of that though the department challenged the orders passed by the petitioner by presenting an appeal to the Income Tax Appellate Tribunal, there was no ground raised at the relevant time in respect of lack of jurisdiction. Such a ground is raised only while issuing Memorandum of Charge to the petitioner. The orders passed by the petitioner, in his capacity as Commissioner of Income Tax (Appeals) were maintained by the appellate forum and ultimately the learned Single Judge of the Madras High Court proceeded to quash the notice relating to block assessment itself, which order was later on reversed while considering the appeal presented by the department and the matters were remitted back.

13 It is the contention of the petitioner that the decision rendered by him in his quasi judicial capacity, while rendering decision in appeals presented against the order passed by lower authorities, cannot be a matter of scrutiny in departmental proceedings. The correctness or otherwise of the decisions rendered by the petitioner in his capacity as CIT (Appeals) is liable to be gone into and corrected by the appellate forum. The decisions rendered by the petitioner while functioning in quasi judicial capacity cannot be analysed and commented upon in departmental proceedings and any error even if assuming it exists, cannot be taken as an act lacking maintenance of absolute integrity and devotion to duty or misconduct leading to a conclusion of contravention of provisions of Rule 3(1)(i), (ii) and (iii)

of CCS (Conduct) Rules, 1964.

14 Perusal of the charges levelled against the petitioner in the second charge sheet indicates that the orders passed by the petitioner in the case of Mr.Rakesh Sarin itself is a matter of inquiry and articles of charge served on the petitioner assailing the correctness of the judgments delivered by the petitioner, are in fact liable to be assailed before the appellate forum. In article of Charge No.V, the petitioner has been called upon to explain as regards orders passed for block assessment period 1997-98, 2002-2003 and part of 2003-2004 and it has been asserted that he has committed an error in holding that the block assessment is barred by law relying on the case law in the matter of Dr. *C.Balakrishna Nair Vs. CIT*, 237 ITR 71 (Kerala) and *CIT Vs Ms. Sandhya P. Nayak*, 253 ITR 534 (Bombay). It is further recorded that reliance placed by the petitioner for drawing conclusion in the aforesaid matters is wrong for the reason that the facts of the reported cases are distinguishable and not applicable to the facts of the case of the assessee. Any objection to the correctness of the judgment cannot be a matter of inquiry in the departmental proceedings. Similarly, in article of charge no. (III) (i) and (ii) , the order passed by the petitioner in his quasi judicial capacity has been criticised and he has been called upon to explain in respect of alleged error in allowing appeals of the assessee. Similar is the charge contained in articles IV and V. The petitioner, as such, contends that the correctness of the decision rendered by the quasi judicial authority cannot be a matter of inquiry in the departmental proceedings. If, at all, there are issues touching integrity of an officer or any allegation relating to *mala fide* or unless there is imputation

questioning *bona fide* of the officer while dealing with the matters in his quasi-judicial capacity, the decisions cannot be a matter of inquiry and the reasonableness or correctness of the conclusion in the absence of any allegation of *mala fide* or corrupt motive cannot form a basis of inquiry.

15 The petitioner also contends that the reasons set out by the petitioner while deciding the appeals in his quasi-judicial capacity, cannot be questioned in departmental proceedings and the decision rendered by him while exercising quasi-judicial functions also cannot be a matter of inquiry. The department has not alleged any *mala fide* intention or corrupt motive against the petitioner while recording decision in the appeals. While recording decision in the appeal, the petitioner has misinterpreted the order passed by the learned Single Judge granting “liberty” to the deciding authority to deal with the appeals by treating it as a “direction”. The misconception of the petitioner to treat the “liberty” granted by the High Court as a direction cannot form the basis of the charge sheet. The fact, however, remains that the appellate authority was granted liberty by the learned Single Judge of the Madras High Court to decide the appeals and the petitioner, while availing the liberty, has dealt with the matter and decided the same. That itself cannot be treated as violation of the directions of the learned Single Judge of the Madras High Court. The petitioner was issued a minor penalty charge sheet alleging misconduct committed by him while functioning as Commissioner of Income Tax during the year 1994-95 and 1995-96 and at the same time, instant Memorandum of Charge came to be issued alleging misconduct while functioning as Commissioner of Income

Tax, Chennai, during the year 2006-2007. Both the Memorandums of Charge issued to the petitioner while his promotion was within contemplation, according to the petitioner, were issued only to divest him of the benefits of the promotion. The Tribunal has not considered these aspects in proper perspective and has arrived at wrong conclusions.

16 It is the contention of the petitioner that so far as first charge sheet served on him relating to six cases of the year 1992-93 and 1993-94 is concerned, departmental proceedings cannot proceed and the petitioner cannot be charged belatedly after twenty years of accrual of alleged cause. Similarly, in respect of second charge sheet, the decisions rendered by the petitioner, in his quasi-judicial capacity, were declared during the year 2007, whereas, charge sheet has been presented in the year 2014 after lapse of 7 years. The charges are not sustainable even on merits considering the fact that the notice of block assessment which forms the basis of the decision itself were quashed by the learned Single Judge of the Madras High Court though decision of the learned Single Judge of the Madras High Court was quashed by the Division Bench of the Madras High Court while entertaining an appeal presented by the Income Tax Department.

17 The fact remains that the decision rendered by the petitioner has been upheld by the judicial forum. Even the appeals presented against the orders passed by the petitioner were disposed of in view of quashing of the block assessment notices and ultimately, the Division Bench of the Madras High Court directed the matters to be remitted back. There may be two

different views on interpretation of a particular provision of law or as regards interpretation of the precedence. However, some view taken by the deciding authority, which is not to the satisfaction of the department, cannot form basis for proceeding departmentally against the quasi-judicial authority. If such logic is applied and is accepted as a correct proposition, it would be difficult for the judicial forums to render decisions in the matter, which may lead to disastrous consequences. The delay in taking cognizance of the alleged acts of misconduct or lack of devotion to the duty, itself is a ground for quashing the charges.

18 The petitioner, in order to substantiate his contention that delay in initiating the disciplinary proceedings causes prejudice to the employee and that itself is a ground for quashing of the charges, places reliance on the judgment in the matter of **M.V.Bijlani Vs. Union of India & others**, (2006) 5 SCC 88; and **State of Madhya Pradesh Vs. Bani Singh and another**, 1990 (supp.) SCC 738, **P.V.Mahadevan Vs. M.D., Tamil Nadu Housing Board**, (2005) 6 SCC 636, and **State of Andhra Pradesh Vs. M. Radhakishan**, reported in (1998) 4 SCC 154.

19 In the matter of **Bani Singh**, there was a delay of six years in initiating departmental proceedings and the proceedings continued for a period of seven years. The Tribunal as well as the High Court failed to consider the aspect of delay of six years in initiating proceedings and refused to grant relief in favour of the petitioner. While dealing with the matter, the Supreme Court observed in paragraph 16 of the judgment, thus:

“..... The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the departmental proceedings as also discontinuance thereof after such a long time evidently prejudiced the delinquent officer.”

20 The Hon'ble Supreme Court, while deciding the matter of **Bijlani**, has also referred to its earlier decision in the matter of **Bani Singh** (supra). In the case of **Bani Singh**, challenge was raised in respect of initiation of departmental inquiry proceedings and issuance of charge sheet in the year 1987 in respect of certain incidence that took place in 1975-76. The Tribunal quashed the Memorandum of Charge and departmental proceedings on the ground of inordinate delay of 12 years in initiation of departmental enquiry with reference to an incidence that took place in 1975-76. The Hon'ble Supreme Court, while dealing with the appeal presented by the **State of Madhya Pradesh**, challenging the judgment of the Tribunal, observed in para 4 of the judgment, as quoted below:

“4 The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject

matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

The Hon'ble Supreme Court, thus, refused to cause interference in the order of the Tribunal directing quashing of the departmental proceedings on account of inordinate delay.

21 In the matter of **P.V. Mahadevan Vs. Md. T.N. Housing Board**, (supra), certain disciplinary actions were taken against the appellant before the Hon'ble Supreme Court, who was working as Superintending Engineer in Tamil Nadu Housing Board. The charge memo was issued against him in the year 2004 in respect of the incidence took place in 1990. The appellant preferred writ petition seeking to quash the charge memo. However, the High Court refused to entertain the request of the appellant and as such, he preferred an appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court, while considering

the objection raised by appellant in respect of desirability of departmental enquiry initiated belatedly, has referred to the judgment in the matter of **Bani Singh** as well as in the case of **N. Radhakishan**. While concluding, the Apex Court has observed that the appellant before the Hon'ble Supreme Court is entitled to succeed and he need not be put to sufferance for the mistake committed by the department in initiating disciplinary proceedings belatedly. In paragraph no.11 of the judgment, the Hon'ble Supreme Court has observed thus:

11 Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

22 In the case of **State of A.P. Vs. N. Radhakishan**, (1998) 4 Supreme Court Cases 154 Respondent before the Hon'ble Supreme Court was functioning as City Planner in the Municipal Corporation. The charge memo was issued to the Respondent employee on 12.11.1987 under Rule 19 of the Andhra Pradesh Civil Services Rules, 1963. There was no explanation for delay. On 31.07.1995, another charge memo came to be issued. Even in the new charge memo, there was no explanation for delay. During pendency of second memo, Respondent became due for consideration for promotion for which DPER meeting was held on 16.08.1995. Two more charge memos dated 27.10.1995 and 01.06.1996 were issued to the Respondent. The respondent approached the Administrative Tribunal seeking to quash the charges and issuance of directions for promoting the employee. The Administrative Tribunal quashed the memo dated 31.07.1995 and issued a direction that Respondent-employee be promoted on the basis of recommendations of DPC ignoring subsequent memos dated 27.10.1995 and 01.06.1996. The decision of the Tribunal was a matter of challenge in the petition presented by the State of Andhra Pradesh before the Hon'ble Supreme Court. The Hon'ble Supreme Court referred to its earlier judgments and while considering the argument in respect of delay in issuing charges, the Supreme Court has observed:

19 It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of

the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

23 The charge-sheet issued by the department on 14.03.2014, which is subject matter of Writ Petition No. 10119/2015, relates to six cases of the assessment year 1992-1993 and 1993-1994. The

three cases, out of six, were considered for recording adverse entries in the ACR of the petitioner during the year 1996. The adverse entries recorded against the petitioner in four out of six columns of the ACR of 1995-1996, were directed to be expunged and adverse remarks against two columns were maintained. The petitioner tendered an appeal to the Honourable President of India aggrieved by retention of adverse remarks in two columns, in the year 1998. It was communicated to the petitioner on 30.10.1998 that the competent authority has expunged two adverse entries in column 20 of Part-III and column 3 of Part-V recorded in the ACR of 1995.

24 It must be noted that the issue relating to six cases was taken up after lapse of about 20 years and Memorandum of Charge came to be issued on 14.03.2014. The objection raised by the department in respect of three cases stands overruled since adverse entries in the ACR, recorded on the basis of scrutiny of three cases, were directed to be expunged. In respect of three cases dealt with by the petitioner, the charge is framed relating to want of devotion to the duties, after lapse of 20 years. There is no reasonable explanation for the delay caused. It is only stated that the matter was pending for consideration at various levels of the department and as such, there was delay. Considering the ratio laid down by the Honourable Supreme Court in the matter of **M.V. Bijalini, Bani Singh, P.V. Mahadevan** and **N. Radhakishan**, the objection raised by petitioner, in respect of causing delay in framing the charges, needs to be accepted and charges levelled against him needs to be quashed.

25 In respect of memorandum of charge, which is subject of challenge in Writ Petition no. 10120/2015, memorandum of charge has been issued on 14.03.2014 in respect of the decisions rendered by the petitioner in his capacity as Commissioner of Income Tax (Appeals) in the years 2006 and 2007.

26 The petitioner dealt with six cases while functioning as Deputy Commissioner of Income Tax in respect of which Memorandum of Charge has been framed after lapse of 20 years. It must be noted that during this intervening period, petitioner was awarded promotion to the post of Commissioner of Income Tax and continued in the said post since many years and is now due for promotion to the post of Principal Commissioner of Income Tax. The alleged irregularity in dealing with the cases while he was functioning as Deputy Commissioner of Income Tax did not cause bar in awarding him promotion. It is surprising as to how proceedings in respect of said lapse, which is tried to be excavated after gap of 20 years, can be permitted to continue. The initiation and pendency of the proceedings has a potential of causing irreparable damage to the future prospectus of the petitioner since he is within consideration zone for promotion to the post of Principal Commissioner of Income Tax.

27 The appeals arising out of block assessment notices issued to one Mr. Rakesh Sarin were decided by the petitioner. It is the contention of the department that the petitioner was not invested with the jurisdiction to decide the matters since he was divested of the charge. The petitioner was holding substantive charge of Commissioner of Income Tax (Appeals) – IV and was given

additional charge of Commissioner of Income Tax (Appeals) – X by an order dated 24.07.2006 by the Chief Commissioner, Income Tax, Chennai-I. The charge of Commissioner of Income Tax-A-X had regular territorial jurisdiction of cases as well as certain specially assigned appeals relating to central charge. Prior to conferment of additional charge, there were 115 cases with the petitioner. Since the Central Board of Direct Taxes wanted to create an additional post of CIT Delhi, it diverted the post of CIT-A-X, Chennai and re-designated it as DIT (BPR), Delhi, by an order dated 25.09.2006. The petitioner contended that what was diverted was the post of CIT and not the charge having workload of appeals. It is contended that there were about 55 matters dealt with by the petitioner relating to additional charge. He sought clarification on receipt of Notification No. 12/2006 dated 07.12.2006 and corrigendum dated 14.12.2006 pointing out that specially assigned cases were still pending with him. The notification dated 07.12.2006 and corrigendum dated 14.12.2006 were silent about specially assigned appeals of Central charge in CIT-A-X. The deficiency was realised thereafter and the notification and corrigendum were amended on 11.01.2007 thereby including specially assigned appeals of the central charge. According to the petitioner, finding recorded by the Tribunal, that the petitioner was not invested with the jurisdiction beyond 25.09.2006 to deal with the appeals, is erroneous. It must be noted at this stage that after decision rendered by petitioner in the case of Mr. Rakesh Sarin, the department has challenged the decision by preferring an appeal to Income Tax Appellate Tribunal (ITAT). However, surprisingly, the objection relating to jurisdiction was not raised in the memorandum of appeal.

28 It would be erroneous to charge the officer of having entertained the appeals exceeding the jurisdiction after seven years of the decision in an appeal, without raising said issue by the department in the appeal preferred against the order.

29 The contention of the department in respect of violation of the order of the Madras High Court is also erroneous. The Madras High Court passed an interim order on 05.08.2005 directing that, *an appeal against the assessment order passed by the assessing officer is stated to be pending before the appellate authority. The appeal proceedings may go on.* Thus, there was no prohibition for continuing with the appeal proceeding. It was, however, an error on the part of petitioner to record in the order that the Madras High Court directed him to decide the appeal without waiting for decision in the appeal. However, entertaining such an erroneous impression to treat the “liberty” granted by the High Court as a “direction” cannot be a matter of departmental proceedings against the petitioner. Assuming for sake of argument, that the petitioner has erroneously used the word “direction” instead of “liberty”, it is merely an erroneous understanding which may reflect on the judicial capabilities or incorrect use of English language. However, it cannot be construed as violation of the interim order passed by the Madras High Court. The orders passed by the petitioner, in his quasi-judicial capacity, without there being attribution of *mala fide* or corrupt motive, cannot be a matter of enquiry.

30 Learned Counsel appearing for the Respondent-Union of India, relying upon the decisions of the Hon'ble Supreme Court in the matter of **Union of India and another Vs. Kunisetty Satyanarayana**, reported in (2006) 12 SCC 28, contended that firstly writ jurisdiction is a discretionary jurisdiction and hence, such discretion under Article 226 of the Constitution of India should not ordinarily be exercised by quashing a notice of charge-sheet. It is further observed in the judgment that in some very rare and exceptional cases the High Court can quash the notice or charge-sheet, if it is illegal. It is further contended, relying upon the judgment of the Hon'ble Supreme Court in the matter of **Union of India and others Vs. K.K.Dhawan**, in AIR 1993 SC 1478, there is no bar for proceeding against an officer performing quasi-judicial functions; and that the Government is not precluded from taking disciplinary action for violation of Conduct Rules even with regard to exercise of quash-judicial powers. Thus, the disciplinary action can be taken in cases :

- i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- ii) if there is *prima facie* material to show recklessness or misconduct in the discharge of his duty;
- iii) if he has acted in a manner which is unbecoming of a Government servant;

- iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- v) if he had acted in order to unduly favour a party;
- vi) if he had been actuated by corrupt motive however small the bribe may be.

31 The Court further proceeds to record that the instances above catalogued are not exhaustive. However, it may be added 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.

32 The Hon'ble Supreme Court in the matter of **K.K. Dhawan**, referred to its earlier decision in the matter of **Govinda Menon Vs. Union of India**, AIR 1967 SC 1274. The contention raised in the matter of **Govinda Menon** was that no disciplinary proceedings could be taken against the appellant therein for acts or omissions with regard to his work as Commissioner under Madras Hindu Religious and Charitable Endowments Act, 1951. Since the orders made by him were quasi-judicial in character, they should be challenged only as provided for under the Act. Rejecting the contention, the Hon'ble Supreme Court has observed thus :

"It is not disputed that the appropriate Government has power to take disciplinary proceedings against the appellant and that he could be removed from service by an order of

the Central Government, but it was contended that I.A.S. Officers are governed by statutory rules, that 'any act or omission' referred to in Rule 4(i) relates only to an act or omission of an officer when serving under the Government, and that serving under the Government means subject to the administrative control of the Government and disciplinary proceedings cannot, therefore, be instituted against the appellant in respect of an act or omission committed by him in the course of his employment as Commissioner. We are unable to accept the proposition contended for by the appellant as correct. Rule 4(i) does not impose any limitation or qualification as to the nature of the act or omission in respect of which disciplinary proceedings can be instituted. Rule 4(1)(b) merely says that the appropriate Government competent to institute disciplinary proceedings against a member of the Service would be the Government under whom such member was serving at the time of commission of such act or omission. It does not say that the act or omission must have been committed in the discharge of his duty or in the course of his employment as a Government servant. It is, therefore, open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omissions which cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the service. It is not disputed that the appellant was, at the time of alleged misconduct, employed as the First Member of the Board of Revenue and he was at the same time performing the duties of Commissioner under the Act in addition to his duties as the First Member of the Board of Revenue. In our opinion, it is not necessary that a member of the Service should have committed the alleged act of omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of

disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service. " In this context reference may be made to the following observations of Lopes, C.J. in *Pearce v. Foster*, (1866) 17 QBD 536, p. 542.

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation

of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

It is further observed thus :

"We next proceed to examine the contention of the appellant that the Commissioner was exercising a quasi-judicial function in sanctioning the leases under the Act and his orders, therefore, could not be questioned except in accordance with the provisions of the Act. The proposition put forward was that quasi-judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be questioned by the executive Government through disciplinary proceedings. It was argued that an appeal is provided under S. 29(4) of the Act against the order of the Commissioner granting sanction to a lease and that it is open to any party aggrieved to file such an appeal and question the legality or correctness of the order of the Commissioner and that the Government also may in revision under S.99 of the Act examine the correctness or legality of the order. It was said that so long as these methods were not adopted the Government could not institute disciplinary proceedings and re-examining the legality of the order of the Commissioner granting sanction to the leases."

It is further observed thus :

"The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of S.

29 and the Rules thereunder in sanctioning the leases. On behalf of the respondents it was argued both by Mr. Sarjoo Prasad and Mr. Bindra that the Commissioner was not discharging quasi-judicial functions in sanctioning leases under S.29 of the Act, but we shall proceed on the assumption that the Commissioner was performing quasi-judicial functions in granting leases under S.29 of the Act. Even upon that assumption we are satisfied that the Government was entitled to institute disciplinary proceedings if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty. It is true that if the provisions of S.29 of the Act or the Rules are disregarded the order of the Commissioner is illegal and such an order could be questioned in appeal under S.29(4) or in revision under S.99 of the Act. But in the present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duties as Commissioner. The appellant was proceeded against because in the discharge of his functions, he acted in utter disregard of the provisions of the Act and the Rules. It is the manner in which he discharged his functions that is brought up in these proceedings. In other words, the charge and the allegations are to the effect that in exercising his powers as Commissioner the appellant acted in abuse of his power and it was in regard to such misconduct that he is being proceeded against. It is manifest, therefore, that though the propriety and legality of the sanction to the leases may be questioned in appeal or revision under the Act, the Government is not precluded from taking disciplinary action if there is proof that the Commissioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he

omitted to observe the prescribed conditions which are essential for the exercise of the statutory power. We see no reason why the Government cannot do so for the purpose of showing that the Commissioner acted in utter disregard of the conditions prescribed for the exercise of his power or that he was guilty of misconduct or gross negligence. We are accordingly of the opinion that the appellant has been unable to make good his argument on this aspect of the case."

33 Relying upon the aforesaid judgment in **Govinda Menon's** case, the Hon'ble Supreme Court, in the matter of **K.K. Dhawan**, concluded that an officer performing quasi-judicial functions could be proceeded departmentally, provided :

- i) the act or omission is such as to reflect on the reputation of the Government servant for his integrity or good faith or devotion to duty, or
- ii) there is prima facie material manifesting recklessness or misconduct in the discharge of the official duty, or
- iii) the officer had failed to act honestly or in good faith or had omitted to observe the prescribed conditions which are essential for the exercise of statutory power.

34 In the instant matter, it is not an allegation against the petitioner that he has acted in reckless manner or that there was any misconduct in discharge of his duties or that he has acted in a manner unbecoming of a Government servant or that there was

any corrupt motive or that there was any allegation in respect of receiving monetary or other favour. What is stated in the Memorandum of Charge is that the decision arrived at by the petitioner is erroneous and reliance placed by him on certain reported judgments is incorrect. The orders passed by the petitioner can be impeached in an appeal on various grounds including that the reliance placed by him on certain judgment is erroneous or that interpretation put by the officer in respect of certain provisions or in respect of certain precedences is incorrect. However, that itself does not reflect corrupt motive or would not amount to misconduct in discharge of official functions or would reflect lack of devotion to the duty. The provisions of law or certain precedences may be amenable to different interpretations. Merely because the deciding authority adopts an interpretation which is not approved by the department, does not itself give rise to any cause to proceed departmentally against the officer exercising quasi-judicial functions.

35 So far as aspect of delay in proceeding against the petitioner is concerned, there is no proper explanation forthcoming. In respect of the Memorandum of Charge served on the petitioner, which is subject matter of Writ Petition no. 10119/2015, there is inordinate delay of 20 years in serving the charges. Whereas, in respect of the Memorandum of Charge served on the petitioner, which is subject matter of Writ Petition No. 10120/2015, there is delay of about seven years in serving the charges. The contention of the petitioner, in this context, needs to be understood for the reason that the petitioner has come within the zone of consideration for securing promotion to the post of

Principal Commissioner, Income Tax, which, according to the petitioner, is a reason for proceeding against him at the instance of his rivals. The charges have been belatedly served, according to the petitioner, in order to throw him out of the zone of consideration for the promotional post of Principal Commissioner of Income Tax.

36 The contentions raised by the petitioner, relying upon the judgment in the matter of **M.V. Bijlani, Bani Singh, P.V. Mahadevan and N. Radhakishan**, needs to be considered. Inordinate delay in initiating disciplinary proceedings causes prejudice to the petitioner more specially when the track record of the petitioner is clean and he is placed in the zone of consideration for the promotional post of Principal Commissioner of Income Tax.

37 Learned Counsel for the respondents, relying upon the judgment of the Supreme Court in the matter of **Secretary, Ministry of Defence Vs. Prabhash Chandra Mirdha**, (2012) 11 SCC 565, contends that the proceedings are not liable to be quashed on the grounds that those are initiated at a belated stage or could not be concluded in a reasonable period, unless the delay creates prejudice to the delinquent officer. It was further observed that the gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

38 In the instant matter, as has been discussed above, delay in proceeding against the petitioner caused serious prejudice to him since the matter has been opened up at the stage when the petitioner has come within the zone of consideration for promotion

to the higher post. Looking to the gravity of the charges, it must be noted that, in respect of the Memorandum of Charge served upon the petitioner, which is a subject matter of Writ Petition No. 10120/2015, Memorandum of Charge has been served after about 20 years. Out of the six cases mentioned in the memorandum of charge, three cases were the matter of consideration for recording adverse entries against the petitioner. Those adverse entries, recorded at the relevant time, were expunged on consideration of representation / appeal by the petitioner. It is, thus, *prima facie* clear that the charges were not substantiated and as such, adverse remarks were expunged. So far as other three cases are concerned, the allegation is in respect of lack of devotion to the duty. There is no allegation of corrupt motive or corrupt practice attributed to the petitioner in any of the Memorandums of Charge. So far as second Memorandum of Charge, which has been served after delay of about seven years, is concerned, the department for the first time, raised a contention in respect of lack of jurisdiction invested with the petitioner for deciding the cases. Though the department presented appeals challenging the appellate orders passed by the petitioner, such contention was never raised before any forum. The contention raised by the department, in that regard, is also questionable. The decisions rendered by the petitioner on merit in the matter of Mr. Rakesh Sarin are questioned referring to the interpretation put by the petitioner to certain precedences / case law and the interpretation of the relevant provisions of Income Tax Act. Merely because the interpretation put by the petitioner may not be acceptable to the department, itself cannot be a matter of departmental enquiry. If such view is accepted, it would be highly impossible for the quasi-

judicial authorities to take decisions in the matter, which would severely prejudice the administration. The department has not attributed anywhere corrupt motive or dishonest conduct on the part of the petitioner while deciding the matters. The belated Memorandums of Charge served on the petitioner surely causes prejudice to the petitioner. Gravity of the allegations also do not calls for permitting the department to proceed with the belated charges levelled against the petitioner after 20 years and seven years, respectively.

39 For the reasons recorded above, according to us, both the writ petitions deserve to be allowed and same are accordingly allowed. The Memorandums of Charge, served on the petitioner, stand quashed and set aside.

40 Rule is accordingly made absolute. There shall be no order as to costs.

A. S. GADKARI
JUDGE

R.M.BORDE
JUDGE

adb/wp1011915