IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7633 OF 2005

Mr. G.S. Bhagia (since deceased)
1(a) Mrs. Gopi G. Bhagia (wife of
late Petitioner) … Petitioner
Versus
Union of India and ors. … Respondents

Mr. Narayan Sahu a/w. Ms Khushboo Deshmukh and Mr. Bhavin Shah I/b M/s. Ferderal and Rashmikant for the Petitioner.
Mr. Rui A. Rodrigues a/w. Mr. Upendra Lokegaonkar I/b Mr. N.R. Prajapati for the Respondents.

CORAM : A. S. OKA AND M. S. SONAK, JJ.

RESERVED ON : 4th OCTOBER, 2018.
PRONOUNCED ON 22nd OCTOBER, 2018.

JUDGMENT [PER M. S. SONAK, J.]:

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 4th March 2005 made by the Central Administrative Tribunal (CAT) dismissing the G.S. Bhagia's (petitioner) O.A.No. 888 of 2002 in order to question the penalty of 50% cut in monthly pension, otherwise admissible to him.

3] During pendency of this petition, the original petitioner Mr.G.S.Bhagia expired and therefore, his legal representative is pursuing the present petition. For sake of convenince, however, reference is made to Mr. G.S. Bhatia as the petitioner.

4] On 21st March 1995, the petitioner was issued a charge memorandum under Rule 9 of the CCS (Pension) Rules, 1972 alleging the following:

> *“Shri G.S. Bhagia while functioning as CIT, Bombay City-XII, Bombay during May, 1991 to April, 1992 gave directions to DCIT, Special Range – 12, Bombay vide his letter dated 30.3.92 in the case of M/s. Savani Transport Ltd. for the A.Y.90-91 which were detrimental to the interest of revenue and with a view to confer undue benefits to the assessee.*
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> *Shri. G.S. Bhagia thus failed to maintain absolute integrity and showed lack of devotion to duty and conduct unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3(1)(i), 3 (1)(ii) and 3 (1) (iii) of the CCS (Conduct) Rules, 1964.”*

5] Consequent upon the petitioner issuing a lengthy denial, an Inquiry Officer was appointed to inquire into the aforesaid charge. The Inquiry Officer, in his inquiry report, held the charge as proved and copy of such inquiry report was duly furnished to the petitioner. The petitioner addressed a detailed representation dated 12th November 1997 urging the rejection of findings in the inquiry report. The Disciplinary Authority, in compliance with the proviso to Rule 9(1) of the

CCS (Pension) Rules 1972 referred the matter to the Union Public Service Commission (UPSC) for consultation. The UPSC vide communication dated 30th April 2001, not only advised the acceptance of the finding recorded in the inquiry report, but after noting that the petitioner's actions had caused substantial loss to the revenue and corresponding unwarranted financial benefits to the assessee, recommended penalty of 50% cut in the pension, otherwise payable to the petitioner.

6] The Disciplinary Authority, upon due consideration of the petitioner's representation as well as advice tendered by the UPSC, by speaking order dated 29th July 2002 imposed upon the petitioner a penalty of 50% cut in the monthly pension, otherwise admissible to the petitioner.

7] The petitioner instituted O.A. No. 888 of 2002 in order to question the penalty order dated 29th July 2002 before the CAT. By impugned judgement and order dated 4th March 2005, the CAT dismissed O.A. No. 888 of 2002. Hence, the present petition.

8] Mr. Narayan Sahu, the learned counsel for the petitioner, raised the following contentions in support of the petition:

A] Since the petitioner was Indian Revenue Service (IRS) Officer against whom a major penalty was contemplated, in terms of the Service Rules as applicable, the competent authority to approve the charge memo would be the Disciplinary Authority, i.e., Finance Minister. Mr. Sahu submits that in the present case, there is absolute no material on record to establish that the charge memo issued to the petitioner was approved by the Finance Minister. Mr.Sahu relies upon ***Union of India and ors. vs. B.G. Gopinath – (2014) 1 SCC 351*** in support of the present ground and submits that the entire disciplinary proceedings, which commenced without any approval from the Finance Minister were a nullity and the penalty imposed upon the petitioner, therefore warrants interference;

B] That there was denial of reasonable opportunity to the petitioner to defend himself and consequently penalty imposed is *ultra vires* Article 311 (2) of the Constitution of India. Mr. Sahu submits that in terms of sub-rule 8(a) of Rule 14 of the CCS (CCA) Rules, the petitioner, upon being charged was entitled to take assistance of any other Government servant posted in any office either at his Headquarter of at a place where enquiry was to be held, to present a case on his behalf. He points out that the petitioner was in fact permitted to take assistance of Shri.R.K. Tiwari, CIT Ahmedabad as his defence assistant. Despite such permission, the Chief CIT at Ahmedabad refused to relieve Shri. R.K.Tiwari on the specious plea that Mr. Tiwari's presence was necessary to attend to a pending court case involving the revenue. Therefore, on 5th February 1997, the date fixed by the Inquiry Officer for the enquiry proceedings, the petitioner was constrained to seek a short adjournment in order to arrange for services of some other defence assistant. However, such adjournment was declined and the inquiry proceeded without the petitioner having the assistance any defence assistant. Mr. Sahu submits that this is a clear case of violation of principles of natural justice and fair play because the refusal of a short adjournment was indicative of bias on the part of the Inquiry Officer.

Besides, denial of right to a defence assistant, also amounts to denial of reasonable opportunity to defend, which is in fact one of the guarantees under Article 311 (2) of the Constitution of India;

C] The petitioner for the purposes of his defence had requested that he be furnished copies of certain documents and files which were vital to explain circumstances and the correct import of the letter dated 30th March 1992 issued by the petitioner to the Deputy Commissioner of Income Tax (Assessing Officer) in the matter of assessee M/s. Savani Transport Ltd. (STL) . However, such document/file never furnished to the petitioner, thereby denying the petitioner reasonable opportunity to lead defence evidence or defend himself in the inquiry proceedings;

D] The petitioner submits that the petitioner's defence based upon the CBDT Circular was completely ignored by the Inquiry Officer, the Disciplinary Authority and the CAT. Mr. Sahu submits that the CBDT had issued detailed Circulars for avoidance of over pitched assessments by Assessing Officers. The petitioner, in his capacity as the Commissioner of Income Tax, was therefore, required to invite the attention of the Assessing Officers to such CBDT Circulars and further, to guide or advice the Assessing Officers, so that they do not indulge in over pitched assessments. Mr. Sahu submits that the CBDT had itself made it clear that over pitched assessment must be avoided, so that there is no unnecessary litigation or delay in completion of assessment. Mr. Sahu submits that if the petitioner's letter dated 30th March 1992 is to be construed in the backdrop of the CBDT Circulars as also the role that was expected from the petitioner as Commissioner of Income Tax, then, it is quite clear that the petitioner had committed no misconduct whatsoever so as to suffer disciplinary proceedings and a major penalty;

E] From the tenor of the letter dated 30th March 1992 addressed by the petitioner to the Assessing Officers and even otherwise it is very clear that the advice or guidance rendered by the petitioner was by no means binding upon the Assessing Officer. The Assessing

Officer was free to independently make the assessment order. Merely because the Assessing Officer incorrectly felt himself to be bound by the advice in the letter dated 30th March 1992, it cannot be said that the petitioner committed any misconduct or displayed any lack of integrity in the matter. Mr. Sahu, therefore, submits that this was not a case of any misconduct on the part of the petitioner and therefore, very initiaton of disciplinary proceedings and consequent imposition of penalty is clearly *ultra vires;*

F] That in any case, the petitioner's action of addressing a letter dated 30th March 1992 to the Assessing Officer was *bonafide* and in utmost good faith. Mr. Sahu points out that the petitioner himself disclosed about the discussions he held with the representative of the Assessee and made reference to CBDT Circulars and guidelines which Assessing Officers are required to follow in matters of such assessment. The petitioner also recorded gist of discussions, which he held that the Assessing Officer and place all such materials on record. Mr. Sahu submits that in case the petitioner had acted with any ulterior purpose, then it is unlikely that the petitioner would leave behind a paper trail of this nature. The fact that the petitioner reduced all such matters in documentary form, establishes that the petitioner's actions were conceived in utmost good faith and *bonafides*. Mr. Sahu submits that all these indicates that there was no misconduct committed by the petitioner and the penalty imposed therefore, clearly warrants interference;

G] The findings recorded by the Inquiry Officer in the inquiry report are vitiated by the perversity, since, the Inquiry Officer has failed to appreciate the correct nature of defence raised by the petitioner. Mr. Sahu submits that the Inquiry Officer also failed to appreciate that the petitioner, as Superior Officer, was required to exercise supervision and control over the Assessing Officer particularly in order to prevent that the Assessing Officer making high pitched assessments. Since, all such relevant considerations were ignored by the Inquiry Officer, the findings recorded by the Inquiry Officer stand vitiated. The penalty imposed on basis of such findings is also equally vitiated and warrants interference;

H] Finally, some submissions were made in defence of the merits of the advice tendered by the petitioner in his letter dated 30th March 1992 addressed to the Assessing Officer. It was contended that the assessee STL in the present case was entitled to the benefits which the petitioner had advised the Assessing Officer to extend to STL. It was submitted that ultimately, there was no serious loss to the revenue since, the assessment made by the Assessing Officer allegedly on the advice of the petitioner, was ultimately set aside by the revisional authorities. For all these reasons, it was urged that this was not a fit case to initiate disciplinary proceedings or to impose any penalty upon the petitioner;

9] Mr. Rui Rodrigues, learned counsel for the respondents, countered the contentions raised by and on behalf of the petitioner. At the outset, he pointed out that the ground that charge memo issued to the petitioner way back on 21st March 1995 allegedly had no approval from the Finance Minister was never raised by the petitioner either in response to the charge memorandum or in the original application before the CAT. He points out that such ground was not even raised in the present petition, when it was originally filed in September 2005. Such ground was raised for the first time in the year 2016 by seeking leave to amend the petition. Even the amendment was allowed subject to just exceptions on the part of the respondents. Mr.Rodrigues submits that the issue as to whether there was approval or not is really a question of fact and therefore, the respondents will be severely prejudiced if such issue is permitted to be raised at this belated stage.

10] Mr. Rodrigues, invited our attention to the affidavit filed by the Dy. Commissioner of Income Tax on 27th September 2018 in response to the ground raised by the petitioner by amending the petition in the year 2016. He pointed out that the deponent has stated that the records are not traceable at the Ministry of Finance on the issue of Charge-sheet dated 21st March 1995 to the petitioner. Mr. Rodrigues submits that nothing prevented the petitioner from raising such a challenge at the earliest instance and such challenge may therefore, not be entertained after lapse of virtually 24 years particularly when records are now not available. Mr. Rodrigues also invited our attention to the statement in the affidavit where reference is made to a decision of the Patna High Court, in which, it is held that as long as the penalty is ultimately approved by the Finance Minister, the circumstance that the charge-sheet may not have been approved would be no ground to interfere with the disciplinary proceedings.

11] Mr. Rodrigues submits that the scope of interference with the disciplinary proceedings in the exercise of powers of judicial review is extremely limited and since the CAT, conscious of such scope as refused to interfere, there is absolutely no jurisdictional error involved in making of the impugned judgment and order. Mr. Rodrigues submits that in such matters, Courts exercising powers of judicial review may not reassess or reevaluate the material before the Disciplinary Authority as has been held by the Apex Court in its several rulings on the subject. Mr. Rodrigues submits that full opportunity was granted to the petitioner in the matter of his defence. He submits that the petitioner has neither pleaded nor established any prejudice in the matter. For all these reasons, Mr. Rodrigues submits that this petition may be dismissed.

12] The rival contentions now fall for our determination.

13] The petitioner's contention that in the present case, the charge memo issued to the petitioner way back on 21st March 1995 had not been allegedly approved by the Finance Minister was sought to be raised for the first time in this Court by amending the petition in the year 2016, even though, the petition had been instituted in the year 2005. Such a contention was never raised by the petitioner in his lengthy reply to the charge memorandum issued on 21st March 1995. Such a contention was never even raised by the petitioner in his lengthy representation to the Disciplinary Authority after the petitioner was furnished with a copy of inquiry report which had held the charge as proved against him. Such a contention was never even raised in the Original Application No. 888 of 2002 before the CAT. Such a contention, as noted earlier, was never even raised in the present petition when it was originally filed in the year 2005. Such a contention has now been raised for the first time in the year 2016 after lapse of almost 21 years.

14] Mr. Sahu, the learned counsel for the petitioner, is not right in his submission that the aforesaid contention now raised is a pure issue of law. The issue as to whether the charge memorandum issued to the petitioner way back on 21st March 1995 had been approved by the Finance Minister or not is really an issue of fact. The effect of absence of such approval may be an issue of law. Therefore, the petitioner cannot be permitted to raise such an issue at such a belated stage for the first time in these proceedings.

15] In response to such a belated contention, the Deputy Commissioner of Income Tax (HQ) has filed an affidavit stating that several letters were addressed to the Ministry of Finance as well as Director General of Income Tax (Vigilance) in the context of the charge memo dated 21st March 1995 issued to the petitioner. However, he has pointed out that despite best efforts made in this regard, the records are not traceable and therefore, it is not possible to make as categorical statement one way or the other on this issue. Mr. Rodrigues, the learned counsel for the respondents, in such circumstances, rightly submitted that the respondents will be severely prejudiced at this point of time, if the petitioner is permitted to urge such a contention, which involves investigation into facts at such a belated stage for the first time in this proceedings.

16] The decision of the Apex Court in ***B.V. Gopinath (supra)*** proceeds on the basis of the admitted position that the charge-sheet issued to the Delinquent Officer had not been approved by the Disciplinary Authority, i.e., Finance Minister. In the present case, there is no material on record to hold either way on the factual aspects as to whether the charge memorandum issued to the petitioner way back on 21st March 1995 was approved or not by the then Finance Minster. Therefore, we are not persuaded to interfere with the impugned order on the ground so belatedly raised in the matter.

17] There is some material on record in support of the petitioner's contention that no sufficient time was granted to the petitioner to avail the services of defence assistant after it was reported that Shri. R.K. Tiwari, the defence assistant engaged by the petitioner could not be spared to attend the inquiry proceedings because his presence was required in connection with a Court matter. A short adjournment could always been have granted by the Inquiry Officer in order to enable the petitioner to make alternate arrangements to secure the services of a defence assistant. However, in the facts and circumstances of the present case, this can hardly be said a case of denial of reasonable opportunity particularly because the petitioner has failed to demonstrate any serious prejudice to him, in the matter of his defence in the inquiry proceedings.

18] It is necessary to note that the petitioner in this case was a Commissioner of Income Tax holding a very high position. The petitioner had filed a lengthy and detailed response to the charge memorandum dated 21st March 1995. The charge did not really involve investigation into any seriously disputed facts or circumstances. The fulcrum of the charge was the letter dated 30th March 1992 addressed by the petitioner to the Assessing Officer, requiring the Assessing Officer to dispose of the assessment proceedings on terms favourable to assessee (STIL). The petitioner admitted having written a letter dated 30th March 1992 to the Assessing Officer. The only issue which was really involved in such circumstance was whether writing of such a letter to a *quasi judicial* authority like the Assessing Officer coupled with admissions on the part of the petitioner himself that the representatives of assessee (STL) had conferred with the petitioner, constitutes misconduct or not. Since this was the main issue, the refusal or adjournment in order to make alternate arrangements for engaging another defence assistant, cannot be regarded as any denial of reasonable opportunity to the petitioner, in the matter of his defence in the inquiry proceedings.

19] The petitioner, apart from quoting sub-rule 8(a) of Rule 14 of the CCS (CCA) Rules and alleging breach, has neither pleaded nor established any serious prejudice on the account of inability of his defence assistant to appear in the inquiry proceedings and refusal on the part of the Inquiry Officer to adjourn the inquiry proceedings so as to enable the petitioner to make alternate arrangements. In matters of this nature, it is not sufficient for a party to merely allege breach in compliance with the principles of natural justice, but further it is necessary that the party pleads and establishes consequent prejudice. The contention in this case is not that '*no* *opportunity*' was granted to the petitioner, but that '*no adequate opportunity*' was granted to the petitioner. To invalidate an action on the basis that '*no adequate opportunity*' was granted to the petitioner, pleadings and proof of prejudice are imperative. In the present case, there are neither any pleadings nor any proof on the aspect of prejudice.

20] The Constitution Bench of the Supreme Court in ***Managing Director, ECIL, Hyderabad & Ors. v/s. B. Karunakar & Ors. - 1993 (4) SCC 727*** has held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of denial to him of the report, has to be considered on facts and circumstances of each case. Where, therefore, even after furnish of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of the natural justice to illogical and exasperating limits. It amounts to an unnatural expansion of natural justice which in itself antithetical to justice.

21] In ***State Bank of Patiala v/s. S. K. Sharma – (1996) 3 SCC 364***, the Supreme Court, restricted its earlier rulings in ***Chintapalli Agency Taluk Sales Coop. Society Ltd. vs. Secy. (Foodand Agriculture) Govt. of A.P. - (1977) 4 SCC 337*** and ***S. L. Kapoor vs. Jagmohan – (1980) 4 SCC 379*** to the facts of the said cases and, of course, subject to the dicta of the Constitution Bench in *Managing Director, ECIL (supra)*. The Supreme Court also made a distinction between cases involving '*no opportunity*' and '*no adequate opportunity*'. In the later cases, the violation of natural justice must be examined on the touchstone of prejudice. There may be situations where the interests of the State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance the public / state interest with the requirement of natural justice and arrive at an appropriate decision.

22] In ***K. L. Tripathi vs. State Bank of India & Ors – (1984) 1 SCC 43,*** the Supreme Court has quoted with approval Wade in his Administrative Law, Fifth Edition (at pages 472 to 475), when he says that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. Everything depends on the subject matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth.

23] Applying the aforesaid principles to the facts and circumstances of the present case, we are satisfied that this was not a case of denial of any reasonable opportunity to the petitioner so as to infer any breach of the constitutional mandate of Article 311 (2) of the Constitution of India. The petitioner, as noted earlier, was holding a very high post and the perusal of the inquiry proceedings indicate that no prejudice whatsoever was suffered by the petitioner on account of denial of adjournment in order to make alternate arrangements for availing services of a defence assistant. The nature of charge was based upon the documents including in particular, letter dated 30th March 1992, which, the petitioner, admitted having sent to the Assessing Officer, entreating the Assessing Officer to decide the assessment in favour of assessee (STL). The inquiry proceedings reveal that the petitioner was given full opportunity to cross-examine the witnesses and such opportunity was duly availed of, by the petitioner. Upon cumulative consideration of all these circumstances, we are unable to uphold Mr. Sahu's second contention that the petitioner was denied reasonable opportunity as contemplated by Article 311 (2) of the Constitution of India.

24] As regards the third contention that the petitioner was denied copies of certain documents or files, we may note that such a contention was never even raised before the CAT. In paragraph 9 of the impugned judgment and order, the CAT has noted that the petitioner's contention was that the Inquiry Officer did not permit the petitioner to submit documents in defence on the ground that such documents were not relevant. Further complaint of the petitioner was that the Inquiry Officer looked at these documents from the point of view of prosecution and not from the point of view of the petitioner. From paragraph 9 of the impugned judgment and order, it is quite clear that it was not even the petitioner's case that he was denied access to or copies of certain relevant and vital documents, which documents he could therefore, not produce in the inquiry proceedings, by way of his defence. The complaint really relates to appreciation or re-evaluation of the documents.

25] Besides, merely stating that the petitioner was deprived of opportunity to produce documents or that the petitioner was not furnished some documents is by no means sufficient to make out a case of denial of reasonable opportunity. The petitioner has nowhere demonstrated that the Inquiry Officer or Disciplinary Authority took into consideration any evidence, whether oral or documentary, without affording the petitioner reasonable opportunity to explain the same. The petitioner has also failed to make out any case that he had in fact sought for, but was denied access to or to copies of some relevant or vital documents necessary for the purposes of his defence. Therefore, we are unable to accept Mr. Sahu's third contention regards non access or non furnish of the some documents and/or files to the petitioner thereby resulting in denial of reasonable opportunity.

26] Mr. Sahu's contentions paraphrased in sub-clauses (D), (E), (F) and (G) of paragraph '8' of this judgment and order, are nothing but an invitation to reevaluate or reappreciate the material on record before the Disciplinary Authority or to exercise any appellate jurisdiction in the matter. The Apex Court, as time and again made it clear that the scope of judicial review in matters of findings recorded by the Disciplinary Authority is extremely limited. The CAT, in the impugned judgment and order, has referred to some rulings of the Apex Court on this subject and has correctly applied principles set out therein.

27] In ***Union of India & Ors. vs. P. Gunasekaran – AIR 2015 SC 545,*** the Apex Court has held that in disciplinary proceedings the High Court is not and cannot act as a second court of first appeal. The Hon'ble Court, in exercise of its power under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether :

> *“a). the enquiry is held by a competent authority;*
>
> *b). the enquiry is held according to the procedure prescribed in that behalf;*
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> *c).. there is violation of the principles of natural justice in conducting the proceedings;*
>
> *d). the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
>
> *e). the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *f). the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
>
> *g). the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
>
> *h). the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
>
> *i). the finding of fact is based on no evidence.”*

28] Further, after stating positively the scope and content of judicial review in such matters, the Apex Court, in paragraph 13 of *P. Gunasekaran (supra)***,** has held that under Article 226/227 of the Constitution of India, the High Court shall not :

> **"***(i). re-appreciate the evidence;*
>
> *(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
>
> *(iii). go into the adequacy of the evidence;*
>
> *(iv). go into the reliability of the evidence;*
>
> *(v). interfere, if there be some legal evidence on which findings can be based.*
>
> *(vi). correct the error of fact however grave it may appear to be;*
>
> *vii). go into the proportionality of punishment unless it shocks its conscience".*

29] In *P. Gunasekaran (supra),* the Dy. Office Superintendent, Central Excise was *inter alia,* charged with signing attendance Register in token of his presence, but then leaving the office without permission and returning only on the next day; the charged Officer being a ministerial Officer impersonated himself as a Central Excise Executive Officer and unauthorisedly conducted passenger checks in a public transport bus; and the charged Officer abused his position and even threatened a passenger in the bus. The charges were held as proved and penalty of compulsory retirement was imposed on the Officer. The Administrative Tribunal endorsed the penalty, but the High Court by re-appreciating the material before the Disciplinary Authority interfered with the penalty imposed and ordered reinstatement with all backwages. The Apex Court set aside the High Court's order and restored the Tribunal's order by explaining the scope and import of jurisdiction under Article 226/227 of the Constitution of India when it comes to judicial review of the disciplinary proceedings.

30] The Apex Court also held that there may be no measurable standard as to what is '*integrity*' in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "*moral uprightness; honesty".* It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values. The Hon'ble Supreme Court noted that the conduct of the respondent Dy. Office Superintendent in a department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view had been endorsed by the Central Administrative Tribunal also. Thereafter, it was not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment.

31] Besides, from the perusal of both CBDT Circular as well as the petitioner's letter dated 30th March 1992, it is quite clear that the petitioner's anxiety was not merely to prevent the Assessing Officer generally making any over-pitched assessments, but to virtually influence the Assessing Officer to make a favourable assessment in favour of assessee (STL). The record indicates that the Assessing Officer based upon the express and written directions contained in the petitioner's letter dated 30th March 1992 made an addition of only Rs.74,444/- towards the undisclosed income of Assesee (STL), when in fact, he was inclined to make an addition of Rs.74,44,381/- on this account. The Assessing Officer, however, recorded his dissent with office notice stating that he was merely following the directions of the petitioner, who was admittedly his superior.

32] The CBDT Circulars nowhere require superior Officers to interfere to this extent with the functioning of the Assessing Officers. The CBDT Circulars nowhere require the superior officers to issue specific directions in individual assessment matters requiring the Assessing Officer to decide assessments in a particular manner. Therefore, even otherwise, we see no much merit in the petitioner's contentions that his letter dated 30th March 1992 was consistent with his duties under the CBDT Circulars. The letter dated 30th March 1992 virtually reads as if it were some written submissions filed by the assessee (STL), whose returns were being assessed by the Assessing Officer.

33] As noted earlier, the petitioner made a lengthy and detailed representation on 27th January 1998 in response to the Inquiry Officer 's report which had held that the charge leveled against the petitioner stands proved (Exhibit-J, pages 264 to 300 of paperbook). In paragraph 5 of this representation, the petitioner admits that in February 1992 assessee's (STL's) representative approached him and attempted to explain him the assessee point of view regards the department's theory of decodification. In the course of this meeting, it is the petitioner who asked the representative of the assessee to prepare a note with regard to assessee's case pointing out as to why the figures in the seized diary were not required to be multiplied by 100 as was done in the case of assessment for A.Y.-89-90 and to submit the same to the Assessing Officer. The petitioner also admits having informed the representative of the assessee (STL) that he would also write a letter to the Assessing Officer asking him to examine the assessee's contention upon receipt of copy of letter addressed by the assessee (STL) to the Assessing Officer. The petitioner has then referred to a five page letter dated 17th February 1992 addressed by the assessee (STL) to the Assessing Officer, a copy of which was marked to the petitioner. The petitioner has then himself made reference to the notings made by him and the letters addressed by him, which material is more than sufficient to sustain the finding recorded by the Inquiry Officer, which finding has been accepted by both the Disciplinary Authority as well as the

CAT. There is no perversity demonstrated in the record of such finding by the Inquiry Officer and the acceptance of the same by both the Disciplinary Authority as well as the CAT.

34] The contention that the petitioner had only requested the Assessing Officer to "*consider*" the case of the assessee and the fault lay at the door of the Assessing Officer to treat the letter dated 30th March 1992 as some sort of direction, is again unacceptable. The tenor of the letter dated 30th March 1992 coupled with the petitioner's notings and other correspondence makes it quite clear that the petitioner had not tendered some sort of advice or guidance, but the petitioner had virtually issued directions to dispose of the assessment proceedings on terms favourable to the assessee and prejudicial to the interests of revenue.

35] The contention that the Revisional Authority, ultimately set aside the assessment made on the basis of the petitioner's letter dated 30th March 1992 and therefore, no prejudice was ultimately caused to the interests of the revenue, is again a contention which deserves no acceptance. In the present case, the Assessing Officer felt himself obliged to follow the directions of the petitioner, who was undoubtedly his superior. However, the Assessing Officer quite correctly placed on record a dissent note thereby alerting the Revisional Authority of the circumstances in which the assessment was made. The Reivsional Authority, upon noticing that the assessment was prejudicial to the interests of the revenue, then exercised revisional powers and interfered with the assessment. There is no question of the petitioner, in such circumstances attempting to down play his role in the matter.

36] The contention that the petitioner acted *bonafide* and such *bonafides* must be inferred from the circumstance that the petitioner addressed a letter dated 30th March 1992 or put official notings , is again not acceptable. Mr. Sahu's contention that in case the petitioner's actions were tainted with bad faith, the petitioner would not have left behind such a paper trail, does not appeal to us. This is not the manner of establishing good faith or *bonafides*.

37] From the material on record, it is difficult to accept the petitioner's contentions that he was only exercising supervision and control over the Assessing Officer when it came to assessment of the STL. The material on record bears out that the petitioner virtually took up the case of the assessee and went to the extent of issuing directions as to the manner in which the assessment proceedings be decided in favour of the assessee (STL). Applying the tests in *P.Gunsekaran (supra),* we cannot say that this is not a case of failure to maintain absolute integrity. We also cannot say that the conduct as established on record does not show lack of devotion to the duty or constitute conduct unbecoming of a Government servant.

38] As noted earlier, some submissions were made in defence of the merits of the assessee's (STL's) case as reflected in the letter dated 30th March 1992. Obviously, this is not the occasion for ruling upon the merits or de-merits of the assessment. The issue involved was really whether the address of the letter dated 30th March 1992 by the petitioner to the Assessing Officer to dispose of the assessment proceedings in favour of the assessee amounts to failure to maintain absolute integrity or shows lack of devotion to duty and conduct unbecoming of a Government servant. On the basis of the material on record, the Inquiry Officer has held against the petitioner. The Disciplinary Authority as well as the UPSC have endorsed the finding of the Inquiry Officer. The CAT has also approved the findings of the Inquiry Officer and the Disciplinary Authority. In the absence of any case of perversity being made out, there is really no scope to take any different view in the mater.

39] Therefore, upon cumulative consideration of all the aforesaid facts and circumstances, we see no good ground to interfere with the impugned judgment and order.

40] Accordingly, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.) **(A. S. OKA, J.)**