



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 17, 2023

+ W.P.(C) 10191/2022, CM APPL. 29508/2022

ALKA RAJVANSHI JAIN

..... Petitioner

Through: Dr. Vineet Kothari, Sr. Adv. with
Mr. M.K. Bhardwaj, Mrs. Priyank M.
Bhardwaj and Ms. Maria Mukesh
Kannan. H., Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Krishna Chandra Dubey and
Mr. Vatan Kumar Attri, Advs. for
R-1 & R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to an order dated April 20, 2022 passed by the xCentral Administrative Tribunal, Principal Bench, New Delhi, ('Tribunal', for short) in Original Application being 1895/2018, ('OA', for short), whereby the Tribunal has dismissed the O.A. by stating in paragraphs 17, 18, 19 and 20, as under:-

*"17. The present O.A. primarily challenges the Charge Memorandum. This aspect is also well settled by the Hon'ble Supreme Court in Civil Appeal No.2333 of 2007 titled **The Secretary, Ministry of Defence vs. Prabhas Chandra Mirdha**, dated 29.05.2012, wherein it*



is held as under:

“11. Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

12. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

(See also: Union of India & Ors. v. Upendra Singh, (1994) 3 SCC 357).

13. Thus, the law on the issue can be summarized to the effect that chargesheet cannot generally be a subject matter of



challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the chargesheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

18. We have also been apprised by the learned counsel for the respondents that in this case, the inquiry has already been completed on 25.07.2019. The applicant has also filed her representation on the Inquiry Report. UPSC advice has also been given to the applicant to submit her representation. The applicant has had the opportunity to put forward her case including all relevant evidence and documents in support of her defence. Thus the disciplinary proceedings are at the final stage. As per above discussion, we do not find any merit in the challenge to the impugned Charge Memorandum by the applicant.

19. In view of the above mentioned, there being no bar on initiating disciplinary proceedings against the officials for their decisions in quasi-judicial positions and the limitation of powers of judicial review of Courts and Tribunal in disciplinary proceedings, we do not find any infirmity or illegality in the impugned order dated 26.07.2019 passed by the respondents.

20. The O.A. being devoid of merit, is accordingly dismissed. There shall be no order as to costs.”



2. The facts as noted from the petition are:- that the petitioner was posted as Commissioner of Income Tax (Appeals)-1, Jodhpur. While working so, she was issued a letter dated April 06, 2016, by the respondents, calling upon her to submit her version in connection with disposal of the appeal decided by her on February 13, 2015, in the case of M/s Mahaveer Infra Engineering Private Limited for Assessment Year 2011-12.

3. The petitioner submitted her reply on May 12, 2016 explaining the order passed in the said appeal. It was also her stand that the order passed by her, has been subsequently upheld by the Income Tax Appellate Tribunal (ITAT), vide its order dated January 11, 2017.

4. Thereafter, Charge Memorandum dated September 26, 2017, was issued to her by the respondents, proposing to hold an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('Rules of 1965', for short), wherein, three Articles of Charge were framed against the petitioner. She submitted her reply to the Charge Memorandum on October 30, 2017 and again on November 10, 2017.

5. According to the petitioner, the charges levelled against her cannot be construed as misconduct which requires imposition of major penalty by conducting disciplinary proceedings, as the order was passed by her in discharge of quasi-judicial functions as Commissioner of Income Tax (Appeals). Therefore, the following prayers were made before the Tribunal:-

“(a) quash and set aside the impugned Memorandum No.C-14011/27/2017 V&L dated 26th September, 2017



(A-1) as well as order dated 26.03.2018 and direct the respondents to give all the consequential benefits to the applicant as withheld on issuance of aforesaid charge memo;

(b) to declare the action of respondents in initiating disciplinary action against the applicant vide aforesaid charge memo dated 26.09.2017 as illegal and unjustified and issue consequential orders;

(c) award the cost of the present original application; and

(iv) pass any other or further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case".

6. In support of her prayers, the petitioner had relied upon the following judgments before the Tribunal:-

(a) Zunjarrao Bhikaji Nagarkar vs. Union of India and Others, (1999) 7 SCC 409;

(b) Inspector Prem Chand vs. Govt. of NCT of Delhi, (2007) 4 SCC 566;

(c) Union of India vs. R.K. Desai, (1993) 2 SCC 49;

(d) Jagmal Singh vs. State of Rajasthan, SBCWP No.479 of 2000 decided by High Court of Rajasthan on 21.07.2015;

(e) Ramesh Chander Singh v. High Court of Allahabad and Another, (2007) 4 SCC 247;

(f) Nai Pal Singh vs. Union of India, MANU/MH/2164/2017;

(g) Dr. B.K. Choudhary vs. State of Rajasthan, 1993 (1) WLC 47;

(h) Dr. K.N. Sachdeva vs. State of Rajasthan and Ors., S.B. Civil Writ Petition No.1973/82 decided on February 03, 1987;



(i) Sukhraj Singh Bajwa vs. State of Rajasthan, 1988 (1) RLR 613;

(j) Tushar Ranjan Mohanty vs. Union of India & Ors., SC AISLJ 2017 (3) (CAT) 188;

(k) Abhay Jain vs. The High Court of Judicature for Rajasthan and Ors., ,MANU/SC/0327/2022;

(l) The Chairman Central Board of Taxes and Others vs. Central Administrative Tribunal, Chandigarh and another in CWP No.4217 of 2016 decided by, High Court of Punjab and Haryana, on March 20, 2018;

(m) Union of India vs. Shri S. Rajguru in WP(C) No. 5113/2014 decided on August 13, 2014.

7. Whereas, primarily, the case of the respondents in their counter reply filed before the Tribunal was that the O.A. is premature as the disciplinary proceedings under challenge before the Tribunal, have not yet been finalized and no penalty has yet been imposed on the petitioner. It was their case that all reasonable opportunities have been provided to the petitioner at all stages in the disciplinary proceedings, which were duly conducted in consultation with CVC and UPSC.

8. It was also their case that the Charge Memorandum has been issued by the disciplinary authority after considering all the facts and circumstances of the case. They justified the issuance of Charge Memorandum in the facts of the present case.

9. Whereas, the respondents had relied upon the following judgments in support of their case:-

(a) Union of India & Ors. vs. Swathi S. Patil, Civil Appeal



No.3881 of 2007 (arising out of SLP (C) No.17417 of 2006) decided on August 22, 2007;

(b) Union of India & Ors. vs. K.K. Dhawan, 1993 AIR 1478;

(c) Union of India vs. Benoy Gupta, 2002 (3) ATJ 7;

(d) Union of India vs. Parma Nand, Civil Appeal No.1709 of 1988, decided on March 14, 1989;

(e) Union of India (UOI) and Ors. vs. Ashok Kacker, Civil Appeal No. 5208/1993 decided on 27.09.1993;

(f) The Secretary, Ministry of Defence & Ors. vs. Prabhas Chandra Mirdha, Civil Appeal No.2333 of 2007, decided on April 30, 2007;

(g) State of Karnataka & Anr. vs. N. Gangaraj, Civil Appeal No.8071 of 2014 decided on February 14, 2020;

(h) Union of India & Ors. vs. Dalbir Singh, Civil Appeal No.5848 of 2021 decided on September 21, 2021.

10. It is stated that after perusing the submissions made before the Tribunal by the learned counsel of the petitioner and the respondents therein and the case laws relied upon by the respective parties, the Tribunal dismissed the O.A., of which relevant paragraphs have already been reproduced in paragraph 1 above.

11. It is further stated that before this Court, the petitioner has challenged the impugned order dated April 20, 2022, passed by the Tribunal in the following manner:-

SUBMISSIONS ON BEHALF OF PETITIONER

12. The following submissions have been made by Dr. Vineet Kothari, learned Senior Counsel, appearing on behalf of the petitioner,



challenging the impugned order passed by the Tribunal:-

12.1 The petitioner has been subjected to disciplinary action on such allegations, which cannot be construed as misconduct inasmuch as, the same are in the context of order rendered by her while discharging her functions as a quasi judicial body;

12.2 Moreover, the order passed by the petitioner, against which she has been served with Charge Memorandum, has subsequently been upheld by the ITAT;

12.3 Disciplinary authority, to acquire jurisdiction under the Rules of 1965, in order to initiate disciplinary proceedings against the petitioner, had to abide by the binding instructions contained in the CVC Circular No.12/10/2016 dated October 24, 2016 ('CVC Circular', for short). In other words, the disciplinary authority was under an obligation to record its satisfaction in the context of the CVC circular, wherein the following instructions were laid down, as per the law laid down by the Supreme Court in the case of ***R.P. Parekh vs. High Court of Gujarat and Anr., Civil Appeal No.6116-6117 of 2016, decided on July 12, 2016***), before initiating any disciplinary proceedings against the petitioner:-

- 12.3.1. to show wanton breach of governing principles of law or procedure by the petitioner;
- 12.3.2. to show pattern manifesting that the petitioner has extraneously considered certain materials to pass her orders;
- 12.3.3. to show that case was of misconduct or



dishonest exercise of judicial power;

- 12.3.4. to appreciate that case in hand was of misconduct & not just erroneous decision;
- 12.3.5. to satisfy itself that the statutory requirement u/r 14(4)(b) of the Rules of 1965, of affording at least 15 days time to the petitioner to submit her written statement of defense, before going ahead with the disciplinary inquiry, has been complied with (whereas, in this case, only 10 days were given to the petitioner).

12.4 As per Dr. Kothari, the aforesaid instructions have not been complied with, by the respondents, before going ahead with the disciplinary inquiry and thereby very jurisdiction of the disciplinary authority was challenged by the petitioner before the Tribunal. He submitted that the following jurisdictional issues were pleaded by the petitioner before the Tribunal:

- 12.4.1. Mistake of law or wrong interpretation of law done by a quasi judicial officer while exercising lawful jurisdiction, cannot be made basis for initiating disciplinary proceedings;
- 12.4.2. Charge Memorandum should have clearly revealed as to how the order passed by the petitioner could be treated as misconduct;
- 12.4.3. Initiation of disciplinary proceedings for carelessness, inadvertence or omission, whilst



rendering orders, is not legally permissible, specifically when such an action is open to judicial review by way of an appeal;

12.4.4. There cannot be a Charge Memorandum, specifically in respect of a quasi judicial order passed by the petitioner, which has subsequently been upheld and merged with the order of the ITAT;

12.4.5. As per the ratio of *Nai Pal Singh (supra)*, it is a settled law that merely an interpretation done by a judicial authority is not acceptable to the department, there cannot be disciplinary proceedings against such judicial authority;

12.4.6. Before initiating disciplinary proceedings against the petitioner, the disciplinary authority was under an obligation (as per CVC circular) to demonstrate as to how the parameters laid down in CVC circular as per the *R.P. Parekh* Case had been satisfied;

13. It has been submitted by Dr. Kothari that the Tribunal without dealing with the aforesaid jurisdictional challenges, dismissed the OA.

14. It has been the submission of Dr. Kothari that since the Tribunal has failed to appreciate the afore-mentioned jurisdictional issues put forth before it by the petitioner herein, the impugned order of the Tribunal as well as the Charge Memorandum, need to be quashed.



15. He has also submitted that though the Tribunal has dismissed the OA, its findings are based on inapplicable materials. He submitted that the Tribunal misdirected itself in applying the CVC circular as well as the ***R.P. Parekh*** case. The Tribunal also ignored the vital factor that the scope for initiating disciplinary proceedings against a person discharging quasi judicial functions is very limited and before initiating disciplinary proceedings against such officers, the disciplinary authority is under an obligation to demonstrate very clearly as to how the parameters laid down in the CVC circular are satisfied. He further submitted that the Tribunal, moreover, has failed to appreciate, that only on satisfaction of those jurisdictional parameters, actions of the person discharging quasi judicial functions, could be amenable to any disciplinary action.

16. As per Dr. Kothari, the Tribunal has misapplied the CVC circular and the following Supreme Court judgments while dismissing the OA filed by the petitioner herein:

- (a) ***K.K. Dhawan (supra)***,
- (b) ***Govinda Memon v. Union of India, AIR 1967 SC 1274;***
- (c) ***Parma Nanda (supra)***
- (d) ***N. Gangaraj (supra)***
- (e) ***Dalbir Singh (supra)***
- (f) ***Prabhas Chandra Mirdha (supra)***

17. It has further been submitted by Dr. Kothari that the Tribunal failed to appreciate that the petitioner was not seeking adjudication or review in the context of correctness or otherwise of the allegations levelled in the Charge Memorandum, before it, but she only wanted the



Tribunal to examine whether in the facts and circumstances of the petitioner's case, the disciplinary authority had the jurisdiction to initiate the disciplinary proceedings. He submitted that the Tribunal clearly erred in equating the fundamental ground in the OA qua absolute '*lack of jurisdiction*' with '*review of correctness or otherwise of the allegations*', as made out in the Charge Memorandum.

18. He also submitted that the finding recorded by the Tribunal that '*there is limitation of powers of judicial review of Courts and Tribunal in disciplinary proceedings*' is patently wrong and unsustainable because the Tribunal has relied upon the following judgments of the Supreme Courts while arriving at the said conclusion and the said judgments are clearly inapplicable in the facts and circumstances of the present case:

- (a) *Parma Nanda (supra)*
- (b) *N.Gangaraj (supra)*
- (c) *Dalbir Singh (supra)*
- (d) *Prabhas Chandra Mirdha (supra)*

19. He has submitted that the impugned order passed by the Tribunal shall also not be sustainable as the Tribunal has acted in undue haste and carelessness. It is his submission that the order passed by the Tribunal is based on extraneous considerations i.e., in paragraph 18 of the order of the Tribunal, the Tribunal whilst disallowing the OA has observed that '*inquiry has already been completed.....UPSC advice has also been given to the applicant to submit her representation*'. He submitted that this clearly shows that the Tribunal has relied upon extraneous considerations to arrive at its conclusion.



Therefore, the Tribunal has committed a serious error of law on resting its judgment on irrelevant and extraneous considerations.

20. He has submitted that in the paragraph 19 of the order passed by the Tribunal, it has recorded '*we do not find any infirmity or illegality in the impugned order dated July 26, 2019*'. This is a classic example of undue haste and non-application of mind inasmuch as the Tribunal without even looking at the actual documents recorded the aforesaid finding. He submitted that it is relevant to note that the Charge Memorandum is dated September 26, 2017 and not July 26, 2019.

21. It has further been submitted that the Articles of Charges, which includes three charges which have been framed against the petitioner, would manifest that these charges, have been levelled, alleging that wrong order has been passed by the petitioner. The charges do not manifest, in any manner that the allegations are against the conduct of the petitioner. He submitted that while Article I of the Charge Memorandum alleges that the petitioner has allowed unsubstantiated claim of sub-contract expenses of ₹98.05 crores by giving '*wrong finding*'. On the other hand, Article II alleges that the petitioner has granted relief of ₹14.25 Crores, on share capital premium. Whereas, Article III alleges that the petitioner allowed the interest expense of ₹36,88,347/- attributable to the interest-free advances given by the assessee. He submitted that the aforesaid charges reveal allegations not against the conduct of the petitioner but only against the wrong order passed by her. He has also submitted that the Tribunal has failed to appreciate that there cannot be a Charge



Memorandum just because the order passed by the petitioner has been viewed to be wrong and more so, when this view has subsequently been discarded by the ITAT vide order dated January 11, 2017, when it upheld the order passed by the petitioner herein in an appeal filed by the respondents herein.

22. He has also relied upon the judgment of the Supreme Court in the case of *Abhay Jain (supra)* to state that the Supreme Court in this Judgment has held that mere suspicion cannot be construed as misconduct. He submitted that the inquiry officer in his report has specifically held that there is no allegation of corruption against the petitioner and on this basis only, the Charge Memorandum deserves to be quashed. He submitted that if Tribunal failed to acknowledge, that specifically in the context of a person discharging functions as quasi judicial officer, no charge memorandum can be said to be legal or justified, if such a charge memorandum does not allege malice or ulterior motive on the part of the delinquent officer.

23. He has also submitted that the Tribunal has also failed to consider the judgment passed by the High Court of Bombay in the case of *Naipal Singh (supra)*, wherein, in the similar facts and circumstances as of this case, the High Court of Bombay quashed the charge memorandum framed against the petitioner therein.

24. Dr. Kothari has also relied upon the judgment of the Supreme Court in the case of *Sadhna Chaudhary v. State of Uttar Pradesh, (2020) 11 SCC 760*, to contend that the Supreme Court in the said judgment has held that an order passed by a Judicial Officer, subsequently upheld in an appeal, cannot be stated to be wrong. He



further relied upon the judgment of the Supreme Court in the case of *Kunhayammed and Ors. v. State of Kerala, (2006) 6 SCC 359*, to state that the Supreme Court in the aforesaid judgment has held that after merger of an order with an order passed in an appeal, only the latter order exists and the former order gets subsumed within the latter order. He has further relied upon the judgment in the case of *Amrendra Kumar Pandey v. Union of India & Ors., Civil Appeal No. 11473-11474/2018 decided on July 14, 2022* to contend that the Supreme Court in the said judgment has held that it is permissible to interfere in a disciplinary proceedings when such a power to initiate disciplinary proceedings has been exercised for improper purpose.

25. He has also submitted that the Tribunal failed to consider that as a statutory requirement under Rule 14 of Rules of 1965, the disciplinary authority was under an obligation to consider all the relevant materials in order to decide whether grounds existed for the disciplinary authority to initiate disciplinary proceedings against the petitioner. He submitted that the fact that order passed by the petitioner which has been subsequently upheld in Appeal by ITAT was a relevant material which should have been considered by the disciplinary authority to judge the correctness or otherwise of petitioner's order. He submitted that the order dated January 11, 2017 passed by the ITAT was available to the disciplinary authority by the time it decided to issue Charge Memorandum on September 26, 2017. He submitted that the grounds of inquiry had already been adjudicated by the ITAT and the Tribunal ignored the vital factor that non-consideration of such clinching evidence, the Charge Memorandum, as



a matter of fact got vitiated.

26. It has also been his submission that the Charge Memorandum also needs to be quashed for having been issued in violation of legal proposition as laid down by the Supreme Court in the case of ***Roop Singh Negi v. Punjab National Bank, 2009 2 SCC 570***. He submitted that along with the Charge Memorandum, the respondents have also relied upon the copy of the statement recorded in the fact finding inquiry. As per Annexure-III of the Charge Memorandum, the respondents have relied upon the statement of one Kishore Jain and Pawan Agarwal, recorded during the preliminary inquiry to prove the charges. He submitted that neither Pawan Agarwal nor Kishore Jain were named as witnesses in the Charge Memorandum and in their absence, their statements cannot be taken into consideration. It is his submission that by mere production of documents, the charges cannot be proved, unless and until, such documents are proved by their author. He has relied upon the judgment of the Supreme Court in the case of ***Roop Singh Negi (supra)*** to contend that the Supreme Court in the said judgment has held that the documents are required to be proved by the witnesses and in the absence of witnesses, documents cannot be relied upon during the course of a departmental inquiry. It has been his case that the Charge Memorandum deserved to be quashed and set aside on this ground only. In other words, he submitted that the present petition needs to be allowed as there is no witness to prove the charges alleged against the petitioner. He further submitted that in the Charge Memorandum, the respondents have mentioned two witnesses in the list of witness, first being ACIT, Circle Barmer and second being CIT



(A)-2, Jodhpur. However, they are not witnesses, as they are shown in the list of witnesses only for the purpose of production of records and not to prove the records. Hence, there is no witness to prove the record as well as charges levelled in the Charge Memorandum against the petitioner. It has been his submission that in absence of any witnesses to prove the charges levelled and also to prove the records, the Charge Memorandum dated September 26, 2017 deserves to be quashed and set aside.

27. Reliance has been placed upon the judgment of the Supreme Court in the case of *State of Punjab v. V.K. Khanna & Ors., (2001) 2 SCC 330*, to contend that it is a settled law that in the event that there is an element of mala fide, motive involved in the matter of issue of charge sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then in that event, courts are justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. Moreover, reliance has also been placed upon the judgment of the High Court of Patna in the case of *Sangeeta Rani v. State of Bihar and Ors., MANU/BH/0413/2023*, to contend that a disciplinary action should be initiated only if there is definite and pointed evidence that the wrong judgment/order has been passed for extraneous considerations and not because of the reasons which are available in the file of a case. Similarly, he has pointed out that the Supreme Court of India in the case of *Chairman-cum M.D., Coal India Ltd. and Ors. v. Ananta Saha and Ors., MANU/SC/0364/2011*, has held that it is a settled law that if initial action is not in consonance with law,



subsequent proceedings would not sanctify the same by relying upon the legal maxim “*sublato fundamento cadit opus*”, meaning thereby, in case a foundation is removed, the superstructure also falls. Similarly, he has also taken the aid of the judgment of the co-ordinate bench of this Court in the case of ***Than Singh v. Union of India (UOI) and Ors., MANU/DE/1660/2002***, to contend that even the charge sheet can be questioned if it is not in conformity with law; if it discloses bias or pre-judgment of the guilt of the charged employee; there is non-application of mind in issuing the charge sheet; if it does not disclose any misconduct; it is vague; it is based on stale allegations or when it is issued mala fide.

28. On the basis of the aforesaid submissions, Dr. Kothari prays that the present petition needs to be allowed, the Charge Memorandum dated September 26, 2017 and the impugned order passed by the Tribunal need to be quashed and set aside, respectively.

SUBMISSIONS ON BEHALF OF RESPONDENTS

29. On the other hand the learned Counsel appearing on behalf of the respondents has submitted that the order dated April 20, 2022 passed by the Tribunal is well reasoned and as such warrants no interference by this Court, on the following grounds:-

29.1 It is his submission that by filing this petition, the petitioner is trying to enlarge the scope of challenge by going into the merits of the Charge Memorandum, just before the final view of the disciplinary authority;

29.2 He submitted that the case is at final stages and the advice of UPSC on the misconduct of the petitioner has already



been examined and moreover, the approval of the disciplinary authority has already been received;

29.3 He submitted that the respondents have already completed the inquiry proceedings and the petitioner shall have the opportunity to challenge the final view of the disciplinary authority before the concerned appellate authority;

29.4 He submitted that petitioner through her written statement of defense has already responded to the Charge Memorandum issued by the respondents. Moreover, her response has been duly examined by the Chairman, CBDT and only after the rejection of her written statement of defense, the matter was further processed for conducting an inquiry by appointment of I.O. & P.O. ;

29.5 He submitted that the advice of the UPSC was received in the office of DGIT (Vig.) on February 21, 2022. The aforesaid advice was provided to the petitioner vide OM dated March 11, 2022. The Tribunal finally heard the O.A. on March 23, 2022, therefore, the advice of the UPSC was given to the petitioner prior to the date of final hearing. So, it has been his submission that the contentions of the petitioner, to such extent, are factually incorrect;

29.6 He has also submitted that it is rightly held by the Tribunal by relying upon ratio of the judgment in the case of ***Prabhas Chandra Mirdha (supra)***, that there was no merit in the challenge of the petitioner;

29.7 He submitted that the Tribunal is also correct in holding



that the power of judicial review of the Tribunal and Courts in respect of matters involving disciplinary proceedings, is extremely limited;

- 29.8 It is submitted that the Tribunal has rightly noted that the inquiry in the present case has already been completed and the petitioner has already submitted her representation on the inquiry report and more so, the petitioner was given the opportunity to put forward her case before the disciplinary authority. Therefore, there was no requirement to interfere with the disciplinary proceedings;
- 29.9 He submitted, the main plea of the petitioner is that the order passed by the petitioner was subsequently upheld by the ITAT vide order dated January 11, 2017. However, the petitioner has failed to bring into the notice of this Court that the said order passed by the ITAT has been challenged and vide order October 12, 2018 in D.B. Income Tax Appeal No.126/2018, the High Court of Judicature for Rajasthan at Jodhpur has admitted the said appeal impugning the order of the ITAT;
- 29.10 He also submitted that the judgment relied upon by Mr. Kothari in the case of *Abhay Jain (supra)* is altogether distinguishable from the facts of the present case;
- 29.11 It was his submission that the judgment in the case of *Arindam Lahiri v. Union of India & Ors., W.P.(C) 13640/2006 decided on March 20, 2009* of the co-ordinate Bench of this Court is also distinguishable



inasmuch as in that case, this Court was considering a case wherein inquiry proceedings were already concluded and moreover the punishment was already imposed upon the petitioner therein. However, in the present case the facts are completely different for the simple reason that the petitioner has not yet been imposed with any punishment;

29.12 He has submitted that the judgment in the case of *Nai Pal Singh (supra)* passed by the High Court of Judicature at Bombay is also very much distinguishable inasmuch as in that case the High Court of Bombay was dealing with a matter, wherein, the charge sheet was issued against the petitioner after much delay and also the inquiry proceedings were already completed. Further, the case of *Sadhna Chaudhary (supra)*, is also distinguishable, inasmuch as, when the matter reached before the Supreme Court, the inquiry against the petitioner therein had already been concluded and charges had already been proved and hence the Supreme Court had the occasion to consider the evidence led by the parties therein, inquiry report and the proportionality of the punishment imposed upon the petitioner therein. It was only after due consideration of these factors, the appeal was allowed. Similarly, he has submitted that the judgment in the case of *Amrendra Kumar Pandey (supra)*, is also distinguishable on facts and thus will be of no avail to the petitioner;



29.13 Therefore, on the basis of the aforesaid submissions, he has prayed for the dismissal of the present writ petition.

ANALYSIS

30. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the Tribunal is justified in dismissing the OA filed by the petitioner herein by holding that:- (i) the officials exercising quasi-judicial functions are not exempted from disciplinary proceedings; (ii) the power of judicial review cannot be exercised akin to adjudicating an appeal arising out of an impugned decision but it is exercised to review the manner in which the decision is made; and (iii) the inquiry having been completed on July 25, 2019 and the petitioner, having, filed her representation on the inquiry report and also when the UPSC advice has also been given to the petitioner to submit her representation or in other words, when the disciplinary proceedings are at the final stage, no interference can be called for, with the Charge Memorandum issued upon the petitioner.

31. Broadly, the submissions made by Dr. Kothari, can be summed up as under:-

- (i) The allegations levelled against the petitioner cannot be construed as misconduct as the same are in the context of the order passed by her in discharge of her functions as quasi-judicial body [CIT (Appeals)];
- (ii) The order passed by the petitioner has been upheld in appeal by ITAT;



- (iii) While issuing a Charge Memorandum against a quasi judicial officer, the disciplinary authority is under an obligation to show satisfaction in the context of CVC circular that the order passed by such an officer is in breach of governing principles of law or procedure;
- (iv) It has to be shown from the imputations, at least *prima facie*, that the petitioner has extraneously considered certain material(s) to pass the impugned order against which the Charge Memorandum has been issued or the petitioner has exercised her quasi-judicial powers dishonestly or the case in hand was of misconduct and not just erroneous decision of law or fact.

32. It was the case of the petitioner before the Tribunal that the mistake of law or wrong interpretation of law committed by a quasi-judicial officer while exercising lawful jurisdiction cannot be made the basis for initiating disciplinary proceedings. The Charge Memorandum issued upon the petitioner, should have clearly contained allegations against the petitioner that the order passed by her reveals misconduct on her part. The carelessness, inadvertence or omission while rendering the order cannot be made the subject matter to initiate disciplinary proceedings, especially against a judicial or quasi-judicial officer.

33. It is also Dr. Kothari's submission that the Tribunal, without examining as to whether disciplinary authority had the jurisdiction to



initiate disciplinary proceedings against the petitioner, has dismissed the OA.

34. Before we deal with the submissions made by Dr. Kothari, it is important to reproduce the position of law, as laid down by the Supreme Court as well as by this Court, with regard to initiation of disciplinary proceedings against an officer discharging quasi-judicial/judicial functions.

35. In *K.K. Dhawan (supra)*, the Supreme Court has culled out the following eventualities when the government is not precluded to take disciplinary action against a judicial or quasi judicial officer, for violation of the conduct rules:-

- 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 / her duty;
- iii. if he/she has acted in a manner which is unbecoming of a government servant;
- iv. if he/she had acted negligently or that he omitted prescribed conditions which are essential for the exercise of the statutory powers;
- v. if he/she had acted in order to unduly favour a party;
- vi. if he/she 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”.



36. In *Zunjarrao Bhikaji Nagarkar (supra)*, the Supreme Court was concerned with a case wherein the appellant while working as a Collector of Central Excise, Nagpur was issued a memorandum with allegations that he favoured the assessee therein, by not imposing penalty on it under Rule 173Q of the Central Excise Rules 1944, when he passed the order in Original No. 20/95 on March 2, 1995, despite holding that the assessee had clandestinely manufactured and cleared the excisable goods wilfully and evaded the excise duty and had ordered confiscation of the goods. In that case, the Supreme Court has also referred to its judgment in the case of *K.K. Dhawan (supra)*, wherein the Supreme Court had highlighted the grounds on which the disciplinary proceedings can be initiated against a person discharging quasi-judicial functions. After considering *K.K. Dhawan (supra)* and various other judgments, the Supreme Court was of the view that merely because the penalty imposable was not imposed, it cannot be said that by not levying penalty, the appellant has favoured the assessee or shown undue favour to him. It was also held that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officer like the appellant therein. It further held that 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 the quasi judicial order. Since nothing of that sort was alleged against the appellant therein, the impugned charge-sheet was rendered illegal / quashed.

37. We may also highlight the following lines in paragraph 40 of



the said judgment, which may have some bearing on the case in hand:-

“40. When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness inadvertance or omission but as culpable negligence. This is how this court in State of Punjab & Ors. & Ors. vs. Ram Singh Ex-Constable [(1992) 4 SCC 54] interpreted 'misconduct' not coming within the purview of mere error in judgment, carelessness or negligence in performance of the duty.....”

(emphasis supplied)

38. Perusal of the aforesaid paragraph would reveal that the Supreme Court has held that negligence in quasi-judicial adjudication is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence, which can be made the basis for initiating disciplinary proceedings against a quasi judicial officer.

39. In **R.K. Desai (supra)**, the Supreme Court was concerned with the facts wherein respondent who was the Income Tax Officer, had granted refunds to unauthorized persons in total disregard to the instructions issued by the Central Board of Direct Taxes. The Supreme Court held that there were no allegations either express or implied that the actions taken by the respondent/officer, were actuated by any corrupt motive or to oblige any person on account of extraneous considerations. It further held that, in such circumstances, merely because such orders of refund were made, even assuming that the orders were erroneous or wrong, no disciplinary proceedings could be initiated as the respondent was discharging quasi-judicial functions.

40. Similarly, in **P.C. Joshi v. State of UP & Ors., MANU/SC/0431/2001**, the Supreme Court decided an appeal against



the order of the High Court of Allahabad dismissing the writ petition filed by the appellant. The writ petition was filed by the appellant, when after initiation of disciplinary proceedings against him, on the charge that he had granted bail to the accused persons, the appellant was terminated from service. The Supreme Court while deciding the appeal, held that though elaborate inquiry was conducted by the Inquiry Officer, there was hardly any material worth the name forthcoming except to scrutinize each one of the order made by the appellant on the judicial side to arrive at a different conclusion. It held that to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. It was further held that the Inquiry Officer has not found any other material which would reflect on the reputation or integrity or good-faith or devotion to duty of the appellant or that her decision is actuated by any corrupt motive. It was observed that, at best, the inquiry officer might have said, that view taken by the appellant was not proper or correct but could not have attributed any motive to the appellant, that is, for extraneous consideration, the appellant had acted in that manner. So, on that basis, the order made by the High Court was set aside and the appellant was directed to be reinstated in service.

41. Whereas, in ***Ramesh Chander Singh (supra)***, the Supreme Court was concerned with the punishment imposed upon the appellant whereby the appellant was reduced to the rank of Civil Judge (Sr. Division) which was subsequently affirmed by the Division Bench of the High Court of Allahabad. The Supreme Court, in appeal, held that if the High Court were to initiate disciplinary proceedings based on



judicial order, there should have been strong grounds to suspect officer's *bonafides* and the order itself should have been actuated by the malice, bias or illegality. Consequently, the judgment of the High Court was set aside and the appellant was directed to be posted to the cadre of District Judge.

42. In ***Krishna Prasad Verma v. State of Bihar, (2019) 10 SCC 640***, on which reliance has been placed by Dr. Kothari, the first charge against the judicial officer / appellant, who was functioning as Additional Distt. and Sessions Judge, was, that he had granted bail to the accused person(s), notwithstanding the fact, that the bail petitions of the same accused person(s) were earlier rejected by the High Court. The second charge against the appellant was that he closed the prosecution evidence resulting in material witnesses not being examined, leading to the acquittal of the accused. The Supreme Court, whilst deciding the appeal, held that the officer may have been guilty of negligence in the sense that he did not carefully go through the case file and failed to note the order of the High Court which was on his file, but such negligence cannot be treated as misconduct. Moreover, the Inquiry Officer did not notice any clear cut allegations qua extraneous influences leading to passing of bail order by the appellant. The Supreme Court reiterated the established principle of law that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind etc. disciplinary proceedings should not be initiated merely on the basis that wrong order has been passed by the judicial officer or merely on the ground that judicial order is incorrect.



43. The Supreme Court in its subsequent judgment in the case of *Sadhna Chaudhary (supra)* was concerned with facts, wherein the charge sheet was issued to the appellant with regard to two judicial orders delivered by her during her stint as Additional District Judge at Ghaziabad. Subsequently, an inquiry was conducted and both the charges were proved against the appellant. The Inquiry Report was then placed before the Administrative Committee, which accepted the same and referred the matter to the Full Court for determination of quantum of punishment. The Full Court resolved to dismiss the appellant from service. The appellant challenged the order of dismissal before the High Court of Allahabad which dismissed the petition. The judgment of the High Court was challenged by the appellant before the Supreme Court. In essence, the appellant was charge-sheeted, *inter alia*, with the following charges:-

“Charge No. 1 - That you on 10.02.2003 while posted as IInd Additional District Judge Ghaziabad decided Land Acquisition Reference No. 193/1996 Lile Singh v. State of U.P. and 35 others illegally and against all judicial norms and propriety awarding to the claimants solatium, additional amount and interest over and above the rate at which two other claimants had entered into compromise which was inclusive of such other benefits at an enhanced rate of Rs. 265/- per sq. yard as against Rs. 74.40 determined by the S.L.A.O. for land area 276 Bighas 12 Biswas and 15 Biswansi, unduly awarded an additional amount of Rs. 47,73,39,903.86 which leads to an inference that you were actuated by extraneous considerations and you thereby failed to maintain absolute integrity and complete devotion to duty and you thus committed misconduct within the meaning of Rule 3 of UP Govt. Servants Conduct Rules 1956.



Charge No. 2 - That you on 7.11.2003 posted as Additional District Judge, Court No. 1, Ghaziabad, while deciding Land Acquisition Reference No. 91 of 2001 Umesh Chandra v. State of UP and 66 other cases enhanced the rate of compensation from Rs. 100/- per square yard determined by the S.L.A.O. to Rs. 160/- per square yard, illegally disregarding the exemplars filed by the Defendants including your own award in Land Acquisition Reference No. 1 of 1992, Surendra v. State of UP decided on 24.03.1993, for land acquired in the same year, in the same area and under the same scheme in order to award an additional amount of Rs. 28,53,24,896.80 to the claimants for land area 483 Bighas, 14 Biswas and 8 Biswansis leading to inference that you were actuated by extraneous considerations and you thereby failed to maintain absolute integrity and complete devotion to duty, and you thus committed misconduct within the meaning of Rule 3 of UP Government Servants Conduct Rules 1956.”

44. The Supreme Court on examination of the case, held that on perusal of charges, it is evident that the exclusive cause of enquiry, inference of dishonesty as well as imposition of penalty upon the appellant was only on the basis of the conclusion of enhancement of compensation by the appellant while deciding a Land Acquisition Reference. It was also held that the end result of the adjudication does not matter and what matters is whether the delinquent officer had taken illegal gratification or had been swayed by extraneous considerations while conducting the adjudicatory process. It was further held that when charge-sheet against the appellant does not reveal any allegations of the process of adjudication having been vitiated, the appeal was allowed and the order of the dismissal of the appellant, as well as the



judgment of the High Court were set-aside.

45. In *Abhay Jain (supra)*, the genesis of the charge sheet was a bail granted by the appellant during his posting as Sessions Judge, Anti-Corruption Department, Bharatpur. An Inquiry was initiated against the appellant. Inter alia, it was alleged against the appellant that he had passed the bail order with some ulterior or oblique motives and for extraneous considerations. The appellant submitted his preliminary objections against the allegations levelled against him, which came to be rejected by the Inquiry Judge without affording the opportunity of personal hearing to the appellant. Thereafter, a higher Judicial Committee, consisting of 5 Judges decided not to recommend the appellant for confirmation and recommended discharge of the appellant despite pendency of the inquiry proceedings. It was in this background, the order of discharge of appellant became the subject matter of the proceedings before the High Court which dismissed the petition. In appeal, the Supreme Court held that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file, it held that this negligence on the part of the appellant, could not have been treated as a misconduct. The Supreme Court whilst relying upon the Judgment in the case of *Sadhna Chaudhary (supra)*, wherein it is held that mere suspicion cannot constitute misconduct, observed that any probability of misconduct needs to be supported with oral or documentary material and this requirement has not been fulfilled in the present case. Accordingly, it allowed the appeal and set aside the impugned order of



the High Court.

46. In the case of *Union of India & Others v. Dolly Saxena, 2001 SCC OnLine Del 756*, the facts are that the respondent was working as Collector of Customs and Central Excise at the relevant time and as such was adjudicating the cases under Central Excise Act. She was charged to have dropped proceedings against the assessee viz. M/s. J.K. Synthesis accused of evasion of customs duty of ₹1.21 Crores or so. *Inter alia*, it was alleged that she was negligent and acted recklessly in discharge of her duties and as such acted contrary to the Conduct Rules, 1964. Against this, she filed the OA, claiming that she could not be subjected to disciplinary proceedings on a charge of misconduct while exercising her quasi judicial functions. The Tribunal on consideration of the matter found that the charges levelled against her were related to her alleged recklessness and negligence only and she was not charged of any other misconduct for showing favor to the assessee. The Tribunal also went a step further and dabbled in touching the correctness of the charges. As a result, the Tribunal quashed the charge sheet by placing reliance on the Supreme Court judgment in the case of *Zunjarrao Bhikaji Nagarkar (supra)*, holding that mere charge of negligence was not enough to subject a judicial or quasi judicial Authority to disciplinary proceedings for passing a wrong adjudicatory order. This Court, in appeal preferred by the appellant by referring to the judgments in *K.K. Dhawan (supra)* & *Zunjarrao Bhikaji Nagarkar (supra)* upheld the findings of the Tribunal by observing that to hold a mere charge of negligence or recklessness against an officer in passing an adjudicatory order in



exercise of quasi-judicial functions unaccompanied by any further charge of extraneous considerations or quid pro quo in passing such order would not constitute a misconduct under the relevant rules to justify disciplinary proceedings against the quasi-judicial authority and dismissed the petition by the UOI.

47. In the case of ***Union of India v. Harsh Vardhan Chauhan, 2010 SCC OnLine Del 4113***, this Court noted the following charges which were framed against the respondent therein, posted as Commissioner Customs, who had disposed of the show cause notice issued against two companies alleging that they have evaded custom duty in sum of ₹54,64,31,672/-, in the following manner:-

- (i) the respondent acted in a haste manner by proceeding with the matter in question and not awaiting the outcome of the appeal preferred by the department against the order passed by the Single Judge of Karnataka High Court; and*
- (ii) the respondent did not correctly appreciate the documentary evidence produced by the department and AEL and REL.”*

With regard to Charge No.1, the Court held that in the teeth of the facts (as noted by the Court), by no stretch of imagination it can be said that the respondent acted in a haste manner in proceeding with the matter in question and not awaited the outcome of the appeal filed by the Department. Therefore, it was held that department was wholly unjustified in issuing a charge sheet against the respondent with respect to Charge-1. With regard to Charge No.2, the Court held that grounds as raised in Charge No.2, were already raised by the department before the appellate authority, i.e., CESTAT. CESTAT,



after adjudicating the order rendered by the respondent, did not find any merit in the said grounds and held that respondent had correctly appreciated the documentary evidence. Thereby, the Court also held that the department was unjustified in issuing a charge sheet in respect of Charge-2. Consequently, this Court held that, if the charge sheet is read meaningfully, it only sought to inculcate the respondent with reference to his acts performed in a quasi judicial functioning and accordingly the order passed by the Tribunal quashing the charge sheet issued by the department against the respondent, was upheld by this Court.

48. In the case of *Arindam Lahiri (supra)*, this Court was concerned with a charge sheet issued to the petitioner, who was working as Commissioner of Income Tax (Appeals). While functioning as Commissioner of Income Tax (Appeals) (Central-IV) in Mumbai, a charge memo, containing two articles of charge, was issued to him with regard to the appeals decided by him. As per Article-1, it was alleged that he passed the order dated September 12, 1994, staying the recovery of demand, in respect of an assessee ignoring statutory requirements and also the decision of ITAT on the same issue. Whereas, in Article-2, it was alleged that he decided the appeals by passing the final order in respect of four assesseees, and the same were prejudicial to the interest of the revenue as material evidence on record was ignored and the assessing officer was not given opportunity to represent revenue's case. Thereafter, a departmental inquiry was conducted, where Inquiry Officer proved both the charges. The findings of the Inquiry Officer were subsequently accepted by the



disciplinary authority and the matter was referred to the Central Vigilance Commission (CVC) for second stage advice and as per the view of CVC, major penalty was opined to be imposed upon the petitioner. The penalty imposed was challenged by the petitioner before the Tribunal, which dismissed the OA. Assailing, the order passed by the Tribunal, writ petition was filed by the petitioner before this Court. This Court by relying upon the judgments in the cases of ***K.K. Dhawan (supra)***, ***Zunjarrao Bhikaji Nagarkar (supra)***, ***Union of India v. Duli Chand, (2006) 5 SCC 680***, ***Ramesh Chander Singh (supra)*** and ***Inspector Prem Chand (supra)***, was of the view that except part of second charge with regard to the appeal decided by the petitioner against one of the assessors, the other charges have not been proved. It was further held that since there was no evidence of mala fides against the petitioner, the order of the Tribunal as well as of the disciplinary authority were set aside and a direction was given to the latter to pass a fresh order.

49. In the case of ***Shri S. Rajguru (supra)***, it was held, though it has been alleged that certain decisions rendered by the respondent while he was acting as CIT (Appeals), indicate lack of devotion to duty, but bare perusal of the charges along with statement of imputations reveal that gravamen of the charges levelled against the respondent are not based on his conduct, however, it was only that the respondent had rendered decisions which, according to the revenue, were erroneous. Thus, it was held by this Court that the same cannot be the basis on which the proceedings for misconduct can be commenced against an officer, who is charged with a quasi-judicial



function.

50. In the case of *Akshay Bipin v. Union of India*, **MANU/DE/3609/2018**, wherein the learned Single Judge of this Court has reiterated the principles as enunciated by the Supreme Court in the case of *K.K. Dhawan (supra)*, by holding that in the absence of any element of corrupt motives or ulterior motives, the disciplinary action against quasi-judicial/ judicial officers cannot be sustained and has set aside the charge sheet. The appeal preferred by the government against this judgment was rejected by the Coordinate Bench of this Court in the case of *Union of India v. Akshay Bipin*, **MANU/DE/2503/2019**, by holding that the Single Judge has rightly quashed the charge sheet and no infirmity was found in the ratio laid down by the Single Judge.

51. Insofar as the judgment of the High Court of Bombay in the case of *Nai Pal Singh (supra)* is concerned, the High Court set aside the memorandum of charges framed against the petitioner alleging various deficiencies in the order passed by him while he was posted as Commissioner of Income Tax (Appeals)-IV, at the relevant time. Relying upon the judgment of the Supreme Court in the case of *K.K. Dhawan (supra)*, it was observed that there was no allegation of corrupt motive or corrupt practice attributed to the petitioner in the memorandum of charges. Accordingly, charges framed against the petitioner were set aside.

52. Having noted the judgments as relied upon by Dr. Kothari, it is clear that as per the law laid down by the Supreme Court in *K.K. Dhawan (supra)*, the Government is not precluded to initiate departmental proceedings against the officers discharging



judicial/quasi-judicial functions and the same can be initiated when the allegations are in the manner depicted by the Supreme Court, as highlighted in paragraph 35, above. For this purpose, we need to look into the charges framed against the petitioner herein. The Articles of Charge framed against the petitioner, read as under:

“ARTICLE- I

That Smt. Alka Rajvanshi Jain while functioning as CTT(A)-2, Jodhpur, Rajasthan from 19.12.2014 to 22.06.2016 decided the income tax appeal of the assessee company, M/s Mahaveer Infra Engineering Private Limited for A.Y 2011-12 vide order dated 13.02.2015 allowing the unsubstantiated claim of sub-contract expenses of Rs.98.05 crore, by giving an erroneous finding that the assessee had further sub-contracted mated the contract work awarded by M/s PACL India Ltd and had retained 2% of the contract amount as commission without taking into cognizance the established facts and findings of search and survey action in the case of the principal party, PACL India Ltd, and its alleged sub-contractors including the assessee and the irrefutable findings from the independent enquiries conducted by the AO and admission of the director of the company at the entire transactions was only on paper and that no services were rendered by then by placing reliance on unsigned work orders and inapplicable case laws the facts of which were clearly distinguishable, and without appreciating that mere payment is not the basis of allowing an expenditure as business deduction w/s.36 and u/s 37 but the onus is on the party claiming such payment as expenditure to prove that the payment is real and that it had been incurred wholly and exclusively for the purposes of its business

By her aforesaid acts, Smt. Alka Rajvanshi Jain has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964

ARTICLE-II

That, Smt. Alka Rajvanshi Jain (Civil List No.89048) while



functioning as CIT(A)-2, Jodhpur, Rajasthan from 19.12.2014 to 22.06.2016, decided the income tax appeal of the assessee company, M/s Mahaveer Infra Engineering Private Limited for A.Y.2011-12 vide order dated 13.02.2015, granting relief on share capital premium of Rs.14.25 cr without examining the real nature of the credits in spite of clear admission from the assessee company itself that the transaction is a mere book entry for the purposes of window dressing and that the counter parties were not even aware of such cash credits being made in their name in assessee's books and further without considering the fact that the assessee failed to discharge the legal onus cast on it to explain not only the source vis-a-vis identity, credit worthiness and capacity of the creditor but also to substantiate the true nature and genuineness of the transaction. By her aforesaid acts, Smt. Alka Rajvanshi Jain has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964

ARTICLE-III

That, Smt. Alka Rajvanshi Jain while functioning as CIT(A)-2, Jodhpur, Rajasthan from 19.12.2014 to 22.06.2016 decided the income tax appeal of the assessee company, M/s Mahaveer Infra Engineering Private Limited for AY 2011-12 vide order dated 13.02.2015, granting relief of Rs.36,88,3477- in respect of interest expense attributable to the interest free advances given by the assessee without verifying true nature of the transactions and source of funds and further without considering the fact that there was no "commercial expediency" and "business nexus" as laid down by the apex court in the case of SA Builders Vs. CIT (2007) (288 ITR 1). By her aforesaid acts, Smt. Alka Rajvanshi Jain has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964"

53. The plea of Dr. Kothari is primarily that the aforementioned charges as framed against the petitioner pertain to discharge of quasi judicial



functions as Commissioner of Income Tax (Appeals)-1. The order passed by the petitioner cannot be made subject matter of the Articles of charge, as has been done in this case and as such the competent authority lacked jurisdiction to even issue the Charge Memorandum.

54. To understand this submission, it is to be seen whether the Articles of Charge as framed and supported by the imputation are such that the case of the petitioner is not covered under the eventualities laid down by the Supreme Court in ***K.K. Dhawan (supra)***.

55. It may be stated here that it is the settled position of law that the Articles of Charge are supported by the statement of imputation and therefore should be read and perused together. The imputation with regard to Article-I, specifically imputation 1.79, which we reproduce below, do indicate that the allegation is, that the order passed by the petitioner is not a mere error in passing the judgment/order or carelessness or negligence simplicitor, in performance of her duty, but that of a culpable negligence and failure to maintain devotion as per Rule 3(1)(ii) of the Conduct Rules, 1964.

“ARTICLE 1.79

The failure of Smt. Alka Rajvanshi Jain, the then CIT (A)-2, Jodhpur to take into cognizance the established facts and findings of search and survey action in the case of the principal party, PACL India Ltd. and its alleged sub-contractors including the assessee the irrefutable findings from the independent enquiries conducted by the AO and the repeated failure of the assessee to substantiate its claim on the issues under appeal is inexplicable. The hurried manner in which relief was granted by Smt. Alka Rajvanshi Jain, the then CIT(A)-2, Jodhpur on the issue of sub-contract expenses of Rs.98.05 crore on the basis of unsigned contracts filed before her by merely relying on the judicial pronouncements cited by the assessee even after being pointed out by



ACIT that they are not applicable to the facts of the assessee is therefore, found to be a clear case of dereliction of duty and failure to maintain absolute integrity on her part. Such acts do not come within the purview of the mere error in judgment, carelessness negligence in performance of the duty but a case of culpable negligence, and failure to maintain devotion to duty as per Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.”

(emphasis supplied)

56. We have already noted that the Supreme Court in the case of **Zunjarrao Bhikaji Nagarkar (supra)** has held that the negligence in case of quasi-judicial adjudication is not perceived as carelessness, inadvertence or omission, but as culpable negligence. In other words, if the view of the competent authority, is that the impugned order passed by an officer reveals culpable negligence while discharging quasi-judicial function, then such a conduct can be made subject matter of disciplinary proceedings. But, whether culpable negligence shall sustain, is a matter of evidence to be produced and considered by the disciplinary authority.

57. So, in that sense, Article-I, as framed against the petitioner, that the acts of the petitioner (as depicted in Article-I), reveal culpable negligence and failure to maintain devotion to duty, *prima facie*, cannot be faulted.

58. Insofar as, Articles-II and III are concerned, we have seen and perused the statement of Articles as well as imputation, as reproduced below in this paragraph. Perusal of the same would reveal that the plea of Dr. Kothari that the allegations in these Articles and imputations (reproduced as under) do not suggest either expressly or impliedly that the order passed by the petitioner was actuated by any corrupt motive or to oblige any person on account of extraneous considerations *prima facie* looks appealing. This we say so, any charge, based on a quasi judicial



order, should have strong grounds to suspect the officer's *bona fide* and should contain allegations revealing that the order passed by such officer has been actuated by malice, bias or illegality.

“ARTICLE –II

2.10. The manner in which relief was granted by Smt. Alka Rajvanshi Jain, the then CIT (A) on the issue of share capital cum premium of Rs.14.25 cr without examining the real nature of the credits in spite of clear admission from the assessee company itself that the transaction is not genuine and that parties were not even aware of cash credits being made in their name in assessee's books prima facie points to lack of due diligence and lack of devotion to duty on her part.

2.11 By her aforesaid acts, Smt. Alka Rajvanshi Jain has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

“ARTICLE-III

3.29 From the facts on record, it clearly emerges that prima facie there was no due diligence shown by Smt Alka Rajvanshi Jain, the then CIT(A)-2, Jodhpur in verifying the correctness of the assessee's claim and the veracity of facts while granting relief in respect of interest expense of Rs.36,88,347/- attributable to the interest free advances given by the assessee.

3.30 By her aforesaid acts, Smt Alka Rajvanshi Jain has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

59. It may be stated, at this stage, that Dr. Kothari has heavily relied upon the fact that the order passed by the petitioner has been subsequently upheld by the ITAT. We are informed that the department has filed the Appeal against the order of the ITAT, before the Division Bench of the



High Court of Rajasthan being IT Appeal No.126/2018 and the same is pending consideration there. In that sense, the order passed by the petitioner has not attained finality.

60. Having said that, what is important is, that pursuant to the issuance of Charge Memorandum dated September 26, 2017, the disciplinary proceedings have been completed. The UPSC advice has also come. The petitioner has been given a copy of the UPSC advice and Inquiry Report. She has also submitted her representation on the Inquiry Report. If that be so, the proceedings are at the final stage. Unfortunately, neither the copy of the report of the inquiry officer nor the UPSC advice and the representation made by the petitioner, have been placed on the record of this Court for the reasons best known. Surely, the petitioner in her representation may have taken the jurisdictional pleas as urged by Dr. Kothari in this petition on the Charge Memorandum, which we have referred above. We are of the view, this Court instead of deciding the pleas itself, the disciplinary authority should first consider the same by keeping in view, the law laid down by the Supreme Court, this Court and other High Courts, along with criteria laid down by CVC vide its Circular dated October 24, 2016, without being influenced by any conclusion drawn by us in this judgment and pass a final order. If the disciplinary authority agrees with the pleas of Dr. Kothari/petitioner, then it shall close the proceedings. But if the disciplinary authority is of the view that the Charge Memorandum has been rightly issued, the disciplinary authority shall pass a reasoned order in the manner directed by us in that regard, so also on the Inquiry report. This we say so, as, even the Tribunal in paragraph 18, which we reproduce as under, had not interfered with Charge Memorandum, by observing as under:-



“18. We have also been apprised by the learned counsel for the respondents that in this case, the inquiry has already been completed on 25.07.2019. The applicant has also filed her representation on the Inquiry Report. UPSC advice has also been given to the applicant to submit her representation. The applicant has had the opportunity to put forward her case including all relevant evidence and documents in support of her defence. Thus the disciplinary proceedings are at the final stage. As per above discussion, we do not find any merit in the challenge to the impugned Charge Memorandum by the applicant.”

(emphasis supplied)

61. So, by not interfering with the impugned judgment of the Tribunal, we dispose of the writ petition on the above terms. No cost.

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In view of the above, the interim order stands vacated.

Application is dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 17, 2023/ds