(2022) 04 CAT CK 0042

In the Central Administrative Tribunal

Case No : Original Application No. 643 Of 2021

Arvind Kumar APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Income Tax Act, 1961 — Section 80IB(10), 143(3), 263
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Constitution Of India, 1949 — Article 226, 227, 309

Citation : (2022) 04 CAT CK 0042

Hon'ble Judges : Manjula Das, J;Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Arvind Kumar, Devina Sharma, Manish Kumar, Hanu Bhaskar

Final Decision : Dismissed

Judgement

Mohd Jamshed, Member (A)

1. This O.A. has been filed by the applicant seeking quashing of the impugned Charge Memorandum dated 30.07.2020, with consequential relief under the law. The Tribunal after hearing passed the order dated 22.03.2021, dismissing this O.A. The applicant filed Writ Petition (C) No. 11634/2021 before the Hon’ble High Court of Delhi challenging the order of this Tribunal dated 22.03.2021. The order passed by this Tribunal was set aside vide Hon’ble High Court’s order dated 11.10.2021, and the case was remanded back to the Tribunal for fresh hearing. The case was accordingly listed before this Tribunal and the respondents were granted time to file written statement/reply. On completion of pleadings, the case was heard on 29.03.2022.

2. The applicant is an officer of Indian Revenue Service. It is submitted that he received a letter dated 11.06.2018 from Additional Director of Income Tax (Vigilance) seeking his clarification to a complaint made against him with regard to allowing deductions under Section 80IB (10) of the Income Tax Act, 1961 on

27.05.2011 for the Assessment Year 2009-10, pertaining to M/s Alliance Nirmaan Limited, Bareilly. A reply was submitted by the applicant on 09.07.2018 to the Additional Director (Vigilance). On 30.07.2020, a Charge Memorandum was issued by the respondents proposing to hold an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Written Statement of Defence was submitted by the applicant on 23.01.2021. In his defence, the applicant submitted that he cannot be questioned for actions taken by him while discharging quasi-judicial functions as an Assessing Officer, under the Income Tax Act, 1961. He challenges the action of the respondents in issuing Charge Memorandum terming it as illegal. The applicant in his submissions has also relied upon the judgments of the Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors., (1999) 7 SCC 409; Ramesh Chander Singh vs. High Court of Allahabad and Anr., (2007) 4 SCC 247; R.P. Parekh (Civil Appeal Nos. 6116-6117 of 2016) dated 12.07.2016; and Union of India vs. S. Rajguru in WP(C) No.5113/2014 of Hon'ble High Court of Delhi. It is also submitted that the disciplinary proceedings initiated against him would also adversely impact his promotion.

3. It is the contention of the applicant that the Charge Memorandum contains only single article of charge relating to his passing of an assessment order under Section 143(3) in the case of M/s Alliance Nirmaan Limited on 27.05.2011 for Assessment Year 2009-10. The article of charge as well as statement of imputation of misconduct specifically mention that the applicant passed an assessment order in this case allowing the deduction of Rs.98,50,000/- as claimed by the assessee under Section 80IB (10), without obtaining the completion certificate from the assessee. It is also mentioned in the Charge Memorandum that the applicant did not consider the fact that the deductions claimed by the said assessee for Assessment Years 2007-08 and 2008-09 had been disallowed by the previous Assessment Officer, and upheld by CIT(A) and also the Income Tax Appellate Tribunal (ITAT) vide order dated 17.07.2014. It is submitted that as per the article of charge, the deductions claimed by the assessee were not allowable for Assessment Year 2009-10, and the said assessment order passed by the applicant was subsequently set aside by the Commissioner of Income Tax, Bareilly vide order dated 18.05.2012 holding it to be erroneous and prejudicial. It is alleged that the applicant has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant, thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. The applicant has challenged this Charge Memorandum and relied upon the above mentioned judgments in support of his case, primarily contending that the decision taken by him was in quasi-judicial capacity and for that no disciplinary proceedings can be initiated against him.

By filing this O.A., he is primarily seeking relief(s) as under:

"(a) To quash the impugned Memorandum dated 30.07.2020 issued by the

Competent Authority under Rule 14 of the CCS (CCA) Rules 1965, with all consequential relief under the law.

(b) To Order any appropriate relief in the interest of justice.

(c) Award costs of the present Original Application in favour of the Applicant and against the Respondents."

The relief is evidently only with regard to quashing the impugned Charge Memorandum dated 30.07.2020 issued to the applicant under Rule 14 of the CCS (CCA) Rules.

4. The applicant also contends that apart from the quasi-judicial nature of his duties, the Charge Memorandum has been issued to him after a lapse of 9 years, and in view of the inordinate delay, the impugned Memorandum also deserves to be quashed as has been held by the Hon'ble Supreme Court in State of Madhya Pradesh vs. Bani Singh, AIR 1990 SC 1308; State of Andhra Pradesh vs. N. Radhakishan, (1998) 4 SCC 154 and in P.V. Mahadevan vs. MD Tamilnadu Housing Board, (2005) 6 SCC 636. The applicant has also relied upon the judgment dated 08.08.2001 of the Hon'ble Apex Court in P.C. Joshi vs. State of U.P. & Ors. in Civil Appeal No. 5182 of 2001.

5. The respondents filed their counter affidavit opposing the O.A. It is submitted that the Charge Memorandum has been issued to the applicant, in accordance with laid down rules and procedures. The claim of the applicant that he was discharging quasi-judicial functions and, therefore, not liable for disciplinary action, is not tenable as any quasi-judicial function also requires proper application of laws and rules. It is further submitted that the applicant allowed deduction under Section 80IB (10) without taking any supporting documents, as required under Section 80IB (10) of the Income Tax Act, 1961, which resulted in loss of revenue. The Revision Order subsequently passed under Section 263 disallowing the deduction under Section 80IB(10) against the order of the applicant, was accepted by the assessee. Thus the facts of the case clearly indicate that it was not an honest exercise of quasi-judicial power by the applicant. A reference has also been made to the definition of vigilance angle as per CVC Vigilance Manual. It is also stated that there is no unexplained delay as there are many stages and the final action has been taken only after obtaining the advice from CVC in order to ensure fair, objective and dispassionate assessment of the facts and circumstances of the case. A Charge Memorandum has been duly served and all reasonable opportunities are being provided to the applicant at various stages of the proceedings, by observing the principles of natural justice. The applicant will continue to have all the opportunities to present his case during the enquiry, in accordance with law.

6. In a rejoinder filed by the applicant, the averments made in the O.A. have been reiterated.

7. Heard Mr. Arvind Kumar with Ms. Devina Sharma, learned counsel for the

applicant and Mr. Manish Kumar & Mr. Hanu Bhaskar, learned counsel for the respondents; and also perused the pleadings on record and judgments relied upon by both the sides.

8. The applicant while working as ITO Ward-I (1), Bareilly passed an assessment order dated 27.05.2011 under Section 143(3) allowing deduction of Rs.98,50,000/- under Section 80IB (10) of the Income Tax Act 1961. Subsequently, as a result of a complaint filed against him with respect to allowing of deduction in the case of M/s Alliance Nirmaan Limited for the Assessment Year 2009-10, the Vigilance Wing of the Department, i.e. Additional Director of Income Tax (Vigilance) sought clarification from the applicant vide letter dated 11.06.2018. The applicant gave reply to the same on 09.07.2018. Subsequently, the respondents sought advice of the CVC for initiating disciplinary proceedings against the applicant. Central Vigilance Commission (CVC) vide its O.M. dated 12.02.2019 advised as under:

"2. The case has been examined in the Commission. On perusal of the case, Commission in agreement with the CBDT, would advise initiation of major penalty proceedings against Shri Arvind Kumar, DCIT.

3. Department's file No.DGIT (Vig.)/NZ/VCR/ 02-15 is returned herewith. Receipt of Commission's advice may be acknowledged."

The CVC in agreement with the recommendations of the respondents advised initiation of major penalty proceedings against the applicant. Charge Memorandum dated 30.07.2020 was thereafter issued to him by the Competent Authority. In the Charge Memorandum, there is only one article of charge, which is extracted below:

"Statement of Articles of Charge Framed Against Shri Arvind Kumar (Civil Code-10562), the then ITO, Ward-1 (1), Bareilly

Article-1

1.1. Shri Arvind Kumar the then ITO, Ward-1(1), Bareilly passed an assessment order u/s 143(3) dated 27.05.2011 allowing deduction of Rs.98,50,000/- u/s 80IB(10) of the Income-tax Act, 1961, in the case of M/s Alliance Nirmaan Limited, Bareilly (AAFCA6550R) for the A.Y. 2009-10. As per the provisions of section 80IB (10) of the Income-tax Act, 1961, assessee was, inter-alia, required to file a completion certificate, after taking necessary approval for the project from local authority. This certificate was not obtained by Shri Arvind Kumar from the assessee during the course of assessment proceedings. The deduction claimed by the assesssee u/s 80IB (10) of the Income-tax Act, 1961, for the A.Y. 2007-08 and 2008-09 were disallowed by the then AO in the case of assessee itself. This fact was also not considered by Sh. Arvind Kumar while passing order u/s 143(3) of the Income-tax Act, 1961 for the A.Y. 2009-10.

1.2. As per facts of the case the assessee derived income from Real Estate Construction and development Business of housing project in the name and style of Alliance Nirmaan Limited having its site at City One Kashipur Road, Rudrapur Uttrakhand. For the assessment year 2009-10, the assessee filed its return of income declaring income of Rs.Nil on 30.03.2009 and claiming deduction u/s 80IB (10) at Rs.85,44,142/-. The Assessing Officer Sh. Arvind Kumar the then ITO, Ward-1(1), Bareilly, allowed the deduction u/s 80IB of the Income-tax Act, 1961 without taking necessary documentary evidence such as completion certificate of construction of the housing project from the competent local authority.

1.3 The Addl. CIT, Range-1, Bareilly in the case of the assessee itself i.e. M/s Alliance Nirmaan Limited, Bareilly had disallowed deduction claimed u/s 80IB(10) for the A.Y. 2007-08 and 2008-09 on the ground, inter-alia, that assessee has failed to produce completion certificate before them. The above action of the AO disallowing deduction claimed under section 80IB(10) of the IT Act, 1961 was also upheld by the CIT(A) vide its order dated 30-08-2010 and 28-07-2011 for the A.Y. 2007-08 and 2008-09 respectively. The appeal of assessee against the above orders of CIT(A) on this issue for the A.Y. 2007-08 and 2008-09 was also dismissed by Hon'ble ITAT vide its combined order dated 17.07.2014. This clearly shows that deduction claimed by the assessee u/s 80IB(10) of the Income-tax Act, 1961, was not allowable for the A.Y. 2009-10 as per section 80IB(10) of the Income-tax Act, 1961.

1.4. The assessment order passed by Sh. Arvind Kumar for the A.Y. 2009-10 was reviewed by CIT, Bareilly u/s 263 of the Income-tax Act, 1961, vide order dated 18.05.2012. It was held by him that the act of Shri Arvind Kumar, allowing the deduction u/s 80IB(10) of the Act, was erroneous and prejudicial to the interest of revenue and he set-aside the said assessment order passed by the AO for A.Y. 2009-10 on the issue of allowing of deduction u/s 80IB (10) of the Act for fresh adjudication after making due inquiries(sic).

1.5 In view of the directions given u/s 263 of the Income-tax Act, 1961, of CIT, Bareilly, Sh. P.K. Arya, ITO, Ward-1(1), Bareilly passed order u/s 143(3)/263 dated 10.12.2012 disallowing deduction claimed by the assessee u/s 80IB (10) of the Income-tax Act, 1961. The assessee accepted the addition made and did not file any appeal against the said order dated 10.12.2012. This shows that the fresh assessment dated 10.12.2012 for the A.Y. 2009-10 made by the AO had reached finality and reinforces the fact that the assessment order passed by Shri Arvind Kumar was made in reckless manner and with malafide intention.

1.6. By his aforesaid misconducts, Shri Arvind Kumar, the then ITO, Bareilly failed to maintain absolute integrity, misconduct, devotion to duty and exhibited conduct unbecoming of a Government servant, thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

9. The article of charge specifically mentions that the applicant allowed deduction under Section 80IB (10) of the Income Tax Act, 1961 without taking necessary

documentary evidence and that he also failed to take into account the fact that the previous Assessing Authority had disallowed the deduction claimed under Section 80IB (10) for the Assessment Years 2007-08 and 2008-09 on the ground that assessee had failed to produce completion certificate before them. This was also upheld by CIT (A) vide its orders dated 30.08.2010 and 28.07.2011 for these assessment years, respectively. Subsequently, the appeal against these orders was also dismissed by the ITAT in the year 2014. Thus, it clearly shows that the deductions claimed by the assessee for the Assessment Year 2009-10 were also not allowable. The order passed by the applicant dated 27.05.2011 was also reviewed by the CIT, Bareilly under Section 263 and vide order dated 18.05.2012, it was held that action of the applicant was erroneous and prejudicial to the interest of revenue, and the same was set aside. It is concluded that by these acts of misconduct, the applicant has failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant, thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. The statement of imputation of misconduct further details various facts inter alia indicating that subsequent orders were passed disallowing deduction claimed under Section 80IB(10). No appeal was filed by the assessee against these orders, which also reinforces the fact that the assessment order passed by the applicant was made in a reckless manner and with mala fide intention. The Charge Memorandum also contains list of documents in support of the article of charge and the list of witnesses.

10. The applicant has relied upon various judgments in support of his claim that while functioning in quasi-judicial position, decisions taken by him cannot be challenged and no disciplinary proceedings can be initiated in this regard. He has also quoted Circular No.12/10/16 dated 24.10.2016 of the CVC regarding examination of cases of officials exercising quasi-judicial functions. The same is extracted below:

"Subject:- Criteria to be followed while examining the lapses of authorities exercising judicial or quasi-judicial functions-regarding.

The Commission vide its Circular No. 39/11/07 dated 1st November 2007 had desired that while examining cases of officials exercising quasi-judicial functions, the criteria laid down by the Supreme Court in the K.K. Dhawan's case should be kept in mind for a uniform approach in such matters.

2. In a recent judgment dated 12th July 2016 in R.P. Parekh Case (Civil Appeal Nos. 6116- 6117 of 2016), the Supreme Court has prescribed the procedure / principles to be followed while examining the case against an officer exercising judicial/quasi-judicial function. The relevant para-15 of the judgment is reproduced below:

"The issue of whether a judicial officer has been açtuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care. A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinized to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The issue which arises in such eases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is erroneous. A wrong decision can yet be a bona fide error or judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. …….”.

3. The Supreme Court in R P Parekh case has laid down the following conditions / procedure to be followed to determine as to whether an act of a judicial officer has been actuated by an oblique motive or corrupt practice:

(i) Since, direct evidence of corruption may not always be forthcoming in every case involving a misconduct, a wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle.

(ii) In the absence of cogent explanation, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that an officer was actuated by extraneous considerations can be drawn.

(iii) The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which form the basis of the charge of misconduct was not an honest exercise of judicial power.

iv) A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact.

4. The Commission desires that in addition to the principles enunciated in the Commission's Circular dated 1st November, 2007, the afore-mentioned criteria in the judgment may also be kept in mind while examining alleged lapses/ misconducts in respect of officials exercising quasi-judicial functions/powers.

5. All CVOs are also advised to apprise the above said principles to all

Disciplinary Authorities/ Administrative Authorities in the Organisations for guidance.”

11. A reading of the cases relied upon and the Circular No.12/10/16 of the CVC which has been issued in terms of the judgment of the Hon’ble Supreme Court in K.K. Dhawan’s case and judgment dated 12.07.2016 in R.P. Parekh’s Case (Civil Appeal Nos. 6116- 6117 of 2016), makes it abundantly clear that disciplinary action can be initiated against the officials exercising quasi-judicial functions. However, the criteria laid down by the Hon’ble Supreme Court in K.K. Dhawan (supra) and also in R.P. Parekh (supra) should be kept in view while examining the alleged lapses and misconduct in respect of officials exercising quasi-judicial functions and powers. It is thus obvious that the decisions taken by the officials in quasi-judicial positions can be examined and, if required, disciplinary action can be taken albeit keeping in view various guidelines provided through the judgments as also indicated in the CVC Circular.

12. The relief sought in the O.A. requires us to deal with few important questions of law, viz. whether a decision taken in quasi-judicial capacity can be challenged and cause initiation of disciplinary proceedings and what is the scope of judicial review by Courts and Tribunals in disciplinary proceedings. Also whether mere issuance of a Charge Memorandum can give rise to any cause of action. All the above mentioned have been dealt with at length in the order passed by this Tribunal recently in O.A. No. 1895/2018, decided on 20.04.2022. It would, therefore, be in order to reproduce the order dated 20.04.2022, which squarely covers this O.A. Relevant paras of the same extracted as under:-

“12. It would therefore be worthwhile to consider the judgment that laid the law in the matter of quasi-judicial nature of work and applicability of disciplinary proceedings. The Hon’ble Apex Court in Union of India & Ors. vs. K.K. Dhawan has comprehensively dealt with the question whether an authority enjoys immunity from disciplinary proceedings with respect to matters decided by him in exercise of quasi-judicial functions. This judgment considers Govinda Menon vs. Union of India, AIR 1967 SC 1274, in which the issue of quasi -judicial functions of a Govt. servant has been dealt with at length. Relevant para quoted is as under:

“………To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service."

It is held that disciplinary proceedings could be initiated against the Govt. servant even with regard to exercise of quasi-judicial powers provided:

(i) The act or omission is such as to reflect on the reputation of the government servant for his integrity or good faith or devotion to duty, or

(ii) there is prima facie material manifesting recklessness or misconduct in the discharge of the official duty, or

(iii) the officer had failed to act honestly or in good faith or had omitted to observe the prescribed conditions which are essential for the exercise of statutory power.

It is further held by the Hon'ble Apex Court that:

"This dictum fully supports the stand of the appellant. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii)if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated.

In view of the foregoing discussion, the appeals will stand allowed. There will be no order as to costs. We make it clear that it is open to the respondent to put forth all defenses open to him in the departmental inquiry which will be considered on its merit."

13. In so far as the question whether disciplinary proceeding can be initiated for alleged lapses against a Government servant, who is deciding the matters in a quasi-judicial position is concerned, the same has also been under consideration of the Government. The Central Vigilance Commission (CVC) vide its Circular No. 12/10/16 dated 24.10.2016 laid down detailed criteria to be followed while examining the lapses of the authorities exercising judicial or quasi-judicial functions, the same is reproduced below:

"Subject:- Criteria to be followed while examining the lapses of authorities exercising judicial or quasi-judicial functions- regarding.

The Commission vide its Circular No. 39/11/07 dated 1st November 2007 had desired that while examining cases of officials exercising quasi-judicial functions, the criteria laid down by the Supreme Court in the K.K. Dhawan's case should be kept in mind for a uniform approach in such matters.

2. In a recent judgment dated 12th July 2016 in R.P. Parekh Case (Civil Appeal Nos. 6116- 6117 of 2016), the Supreme Court has prescribed the procedure / principles to be followed while examining the case against an officer exercising judicial/quasi-judicial function. The relevant para-15 of the judgment is reproduced below:

"The issue of whether a judicial officer has been açtuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care. A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinized to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The issue which arises in such eases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is erroneous. A wrong decision can yet be a bona fide error or judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. …….”.

3. The Supreme Court in R P Parekh case has laid down the following conditions / procedure to be followed to determine as to whether an act of a judicial officer has been actuated by an oblique motive or corrupt practice:

(i) Since, direct evidence of corruption may not always be forthcoming in every case involving a misconduct, a wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle.

(ii) In the absence of cogent explanation, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that an officer was actuated by extraneous considerations can be drawn.

(iii) The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which form the basis of the charge of misconduct was not an honest exercise of judicial power.

iv) A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact.

4. The Commission desires that in addition to the principles enunciated in the Commission's Circular dated 1st November, 2007, the afore-mentioned criteria in the judgment may also be kept in mind while examining alleged lapses/ misconducts in respect of officials exercising quasi-judicial functions/powers.

5. All CVOs are also advised to apprise the above said principles to all Disciplinary Authorities/ Administrative Authorities in the Organisations for guidance.”

It is thus clearly established that the officials exercising quasi-judicial functions are not exempt from disciplinary proceedings. In case of the applicant, it is evident that reasonable opportunity was given to her while obtaining clarification by the Vigilance Department and thereafter her defence was also considered by the respondents before issuing the charge-sheet.

14. We have also considered another issue of power of judicial review of the Tribunals and Courts in disciplinary proceedings. In this regard, Hon’ble Supreme Court in Union of India vs. Parma Nanda (supra) has held as under:

“26. So much is, we think, established law on the scope of jurisdiction and the amplitude of powers of the Tribunal. However, of late we have been receiving a large number of appeals from the orders of Tribunals-Central and Statescomplaining about the interference with the penalty awarded in the disciplinary proceedings. The Tribunals seem to take it within their discretion to interfere with the penalty on the ground that it is not commensurate with the delinquency of the official. The law already declared by this Court, which we reiterate discretion or power.

27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

15. In another judgment dated 14.02.2020 in the State of Karnataka and Anr. vs. N. Gangaraj (supra), the Hon'ble Apex Court considered the judgment of B.C. Chaturvedi vs. Union of India and Ors., (1995) 6 SCC 749, wherein it was held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It also quoted State of Bikaner and Jaipur vs. Nemi Chand Nalwaya, (2011) 4 SCC 584 wherein it is held that the Courts will not act as an Appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. Finally, it has relied upon the Hon'ble Apex Court judgment in Union of India vs. P. Gunasekaran, (2015) 2 SCC 610, the same is extracted below:

"13. 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."

16. In a recent judgment dated 21.09.2021 in Civil Appeal No. 5848 of 2021 titled Union of India & Ors. vs. Dalbir Singh, the Hon'ble Apex Court having relied upon all the previous judgments, specifically considered the judgment in Union of India vs. P. Gunasekaran (supra), which laid down the broad parameters for the exercise of judicial review, quoted above.

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 summarised 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."

13. We have perused all the relied upon judgments. The above quoted order was passed in case of similarly situated person raising almost similar challenges to the Charge Memorandum. The above order squarely covers the present O.A. In the above facts and circumstances, we are of the view that there is no infirmity or illegality in the Charge Memorandum issued to the applicant. It is well settled that mere issuance of a charge memorandum may not give rise to a cause of action. During the hearing, we are advised that the disciplinary proceedings are about to be concluded, and that the applicant is being extended all reasonable opportunities during the enquiry proceedings to put forward his defence. The claims made by the applicant regarding delay in disciplinary proceedings, the orders passed by him in quasi-judicial capacity etc. have been duly examined. We find that the claims and challenges of the applicant to the Charge Memorandum are not tenable in any way.

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

