

**(2006) 04 SC CK 0105**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 2168 of 2006**

Union Of India

APPELLANT

Vs

Duli Chand

RESPONDENT

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**Date of Decision :** 21-04-2006

**Acts Referred:**

**Citation :** (2006) 5 SCC 680 : (2006) 7 Scale 476

**Hon'ble Judges :** Ruma Pal, J;C. K. Thakker, J;Markandey Katju J

**Bench :** Full Bench

**Final Decision :** Allowed

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## **Judgement**

1. Leave granted.

2. The issue in this appeal is whether disciplinary action could be taken against the respondent employee on the ground that the employee had been found to be grossly negligent while discharging quasi-judicial functions. We need not go into the factual aspect of the dispute except to record that the respondent had been punished by the disciplinary authority on the ground that he had negligently allowed claims for refund to an applicant on three different occasions. The punishment imposed was stoppage of two annual increments with cumulative effect. It may also be noticed at this stage that there is no challenge to the fact that the disciplinary authority had complied with all the necessary procedures for passing the impugned order. However, the action of the disciplinary authority was challenged before the Central Administrative Tribunal on the ground that no disciplinary proceedings would lie against 'an officer discharging judicial/quasi-judicial functions unless there was an element of moral turpitude. The Central Administrative Tribunal upheld the finding of the gross negligence on the part of the respondent. But it was held, relying upon the decision of this Court in *Zunjarrao Bhikaji Nagarkar V/s. Union of India* that disciplinary proceedings would not lie against the officer discharging quasi-judicial functions unless it were established that the officer concerned had obtained an undue advantage thereby or in connection therewith.

3. The decision of the Tribunal was challenged by the appellants before the High Court. The High Court came to the conclusion that since no ulterior motive was alleged against the respondent, the Tribunal was correct in quashing the proceedings against the respondent.

4. Learned counsel appearing on behalf of the appellants in impugning the order has submitted that the decisions of the Tribunal and the High Court have incorrectly proceeded on the law as it now stands on the issue.

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

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

(ii) if there is prima facie material to show recklessness or misconduct in the 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'."

6. The Court, however, made it clear that ultimately the matter would have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above.

7. The decision in K.K. Dhawan case was considered by this Court and followed in Govt. of T.N. V/s. K.N. Ramamurthy. In that case the Tribunal had set aside the order imposing punishment on an officer who had been discharging judicial functions. The Court was of the view that the Tribunal's action was contrary to the several judgments of this Court and the settled law on the question.

8. In 1999 another Bench of two Judges in Zunjarrao Bhikaji Nagarkar considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the assessee to

whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge sheet to the charged officer.

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