

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 27TH DAY OF MAY 2019 / 6TH JYAISHTA, 1941

OP (CAT).No. 205 of 2015

AGAINST THE ORDER/JUDGMENT IN OA 726/2015 of CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/APPLICANT:

SHANTAM BOSE, AGED 50 YEARS
S/O.LATE SHRI.K.BOSE, COMMISSIONER OF INCOME TAX
(DR) KOCHI RESIDING PERMANENTLY AT 1401,
KRYPTON TOWERS, ZAKHARIA BUNDER ROAD,
SEWRI (W), MUMBAI-400 015.

BY ADVS.SRI. MOHAN PARASARAN (SENIOR)
SRI.DENNIS VARGHESE
SRI A.K.BEHERA
SRI.ANEESH JOSEPH
SRI.M.RAMESH CHANDER (SR.)

RESPONDENT/RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE,
CENTRAL BOARD OF DIRECT TAXES, NEW DELHI-110 001.
- 2 THE PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX KERALA, CENTRAL REVENUE BUILDING
I.S.PRESS ROAD, KOCHI-682018.
- 3 SHRI.B.P.GAUR
THE THEN DIRECTOR GENERAL OF INCOME TAX
(INVESTIGATION) MUMBAI (TO BE SERVED THROUGH THE
RESPONDENT NO.1), PIN-110001.

BY ADV.SRI.DINESH R.SHENOY, CGC

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 27.05.2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Ravikumar, J.

Whether disciplinary proceedings can be abruptly terminated at the stage when the employee was only charge sheeted ? Under what circumstances such proceedings can be interfered with, even if it can be interfered with at that stage ? These and allied questions crop up for consideration in this original petition directed against the order dated 18.9.2015 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A.No.726 of 2015. Hence, we are of the view that it is only profitable to have the following prelude for a proper disposal of the original petition:-

While considering the question as to whether disciplinary proceedings can be abruptly terminated at the stage when the delinquent employee was only charge sheeted the decision of the Hon'ble Apex Court in **Union of India v. Ashok Kacker ((1995) Suppl. 1 SCC 187)** assumes relevance. That was a case where the respondent, on being charge sheeted, without replying to it and without waiting for the decision of the disciplinary authority thereon, rushed to the Central Administrative Tribunal seeking quashment of the charge-sheet. The Tribunal entertained it and ultimately quashed the charge sheet. While setting aside the order of the Tribunal and dismissing the Original Application filed before the Tribunal the Apex

Court held that it was premature for an Administrative Tribunal to consider a challenge to the charge sheet where the employee rushed to the court immediately on receiving it and he should have made a reply to the charge sheet raising all the points available to him and invite the decision of the disciplinary authority thereon.

2. Before considering the merits of the challenge in this original petition, based on the aforesaid decision the next question to be considered is whether there is inviolability to the said general position ? That was virtually considered by the Apex Court in its later decision in **State of A.P. v. N.Radhakrishnan ((1998) 4 SCC 154)**. We may hasten to add that the said decision is virtually relied on by the learned counsel appearing for the petitioner. Paragraph 19 therein is worthy to be extracted in the contextual situation and it reads thus:-

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not

made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

3. A perusal of the decision in **Radhakrishnan's** case would reveal that the Apex Court carved out certain exceptions to the general position and held that interference is permissible to bring an end to disciplinary proceedings initiated after an inordinate delay or where there occurred inexplicable and inordinate delay in concluding it. Going by the decision, courts have to take into consideration all the relevant factors and to balance and weigh them to determine if it would be in the interest of clean and honest administration to terminate the disciplinary proceedings after long delay particularly, when the delay is abnormal and there is no

explanation for the delay. In other words, going by the said decision, under normal circumstances, disciplinary proceedings should be allowed to take their course as per the relevant rules and it would not be possible to lay down any pre-determined principles applicable to all cases and in all situations where there occurred delay in initiating/concluding disciplinary proceedings. Evidently, the Apex Court held that whether on such grounds disciplinary proceedings could be terminated or not has to be examined based on the facts and circumstances of each case. It was also held therein that in considering whether delay had vitiated the disciplinary proceedings the court has to consider the nature of the charge, its complexity and on what account the delay had occurred. Shortly stated, going by the said decision, the fact that there occurred delay in initiation or conclusion of disciplinary proceedings by itself cannot be a reason to terminate disciplinary proceedings though it is permissible under certain rare and specific circumstances. Though the learned Senior Counsel appearing for the petitioner relied on various other decisions we are of the firm view that as long as the position settled in **Radhakrishnan's** case was not varied by putting a total embargo on continuation of disciplinary proceedings on the sole ground of long delay there is no necessity to delve into the contentions based on such decisions and it will suffice to consider the rival contentions

with reference to factual position obtained in this case, in the light of the decision in **Radhakrishnan's** case (supra). We will now, revert to the case on hand.

4. This original petition is filed by the applicant in O.A.No.726 of 2015 on being aggrieved by its dismissal. The petitioner is presently working as Income Tax Commissioner (Appeals). In the Original Application he called in question the very initiation of the disciplinary action against him in respect of incidents allegedly occurred in the year 2010, more specifically described in the memorandum dated 17.4.2015 and the statement of imputations of misconduct under Articles I and II, appended therewith (marked as Annexure-A1 of Ext.P2) while he was working as Additional Director of Income Tax (Investigation), Head Quarters, Mumbai. In fact, he sought for quashment of Annexure-A1 and also of all incidental proceedings. Before the Tribunal manifold contentions had been raised by him to mount challenge against Annexure-A1 and his claims and contentions were stoutly resisted by the learned Central Government Senior Panel Counsel. The Tribunal appreciated the rival contentions and evaluated the materials on record and ultimately held that the Original Application was moved prematurely and it would be too early for the Tribunal to enter into a finding on any of the aspects touching the merits of the contentions advanced by the

applicant/petitioner herein. Consequently, the O.A. was dismissed as per order dated 18.9.2018. The Tribunal held:-

"To sum up, it is too early for this Tribunal to enter a finding on any of the aspects concerning the merit of the contentions advanced by the applicant. The plea raised by the applicant that Annexure A1 would indicate that the authority had already entered a finding and that the inquiry would be a farce, is unsound and unacceptable. It is only the charge that has been framed against the applicant to which he has to submit his written statement of defence. We could not find any illegality touching upon the jurisdiction or otherwise to interfere in the disciplinary action at this stage."

As stated earlier, the petitioner filed the captioned original petition feeling aggrieved by the said order and seeking to set aside the said order of termination of disciplinary proceedings initiated under Annexure-A1 of Ext.P2.

5. We have heard the learned Senior Advocate Shri.Mohan Parasaran appearing for the petitioner and Sri.Dinesh R Shenoy, the learned counsel appearing for the respondents.

6. As stated earlier, the petitioner approached the Tribunal seeking quashment of Annexure-A1 which is the true copy of the memorandum of charges dated 17.04.2015 and the statement of imputations of misconduct and all associated proceedings based thereon. In that context, it is only apt to refer to the two charges viz., Articles I & II in Annexure-A1 and they read as follows:-

ARTICLE-I

That the said Shri Shantam Bose, while functioning as Addl. Director of Income-tax (HQ to Director General Income Tax (Inv.) referred to as DGIT(Inv.) hereunder), Mumbai during period November 2009 to May, 2010 abused his official position to get possession of the confidential documents kept in the file of Air Intelligence Unit (AIU), Mumbai concerning Shri Davinder Ahuja who was intercepted at Sahar Airport on 26.09.2009 with the intention of obtaining the identity of the informant. No such directions in the matter had been issued by the then DGIT(Inv.), Mumbai, Smt.Mala Ramakrishnan to Shri Shantam Bose. The identity of the informant was leaked to Shri Davinder Ahuja and subsequently copies of confidential documents contained in the interception file were found in the business premises of the assessee Shri Davinder Ahuja during the survey action on 11.05.2010.

By his above actions, Shri Shantam Bose, the then (Addl.DIT(HQ) to DGIT(Inv.) Mumbai thus failed to maintain absolute integrity and showed lack of devotion to duty and exhibited conduct unbecoming of a Government servant thereby contravening the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri Shantam Bose, while functioning as Addl. Director of Income-tax (HQ) to DGIT(Inv.), Mumbai committed serious misconduct and showed lack of integrity by unauthorisedly sharing the contents of the informant's letter dated 30.04.2010 with Shri Davinder Ahuja, the assessee through Shri Mohit Kapoor, retired IRS officer.

By his above actions, Shri Shantam Bose the then Addl. DIT(HQ) to DGIT(Inv.), Mumbai thus failed to maintain absolute integrity and showed lack of devotion to duty and exhibited conduct unbecoming of a Government servant thereby contravening the

provisions of Rule 3(!)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

7. The petitioner raised various grounds in support of his challenge against Annexure-A1. The core contention of the petitioner is that there occurred inordinate delay in the matter of initiation of disciplinary proceedings and on that sole score Annexure-A1 is liable to be quashed. It is contended that proceedings pursuant to Annexure-A1, if permitted to continue, would amount to post decisional hearing and evidently, this contention is founded on paragraph 23 of Annexure-A1 (in Ext.P2), more particularly, the following recital therein:-

"The whole sequence of events and the phone calls intercepted in the Data Bank establish the role of Shri.Shantam Bose in leaking confidential information in the case of Shri.Davinder Ahuja."

Referring to the said recital, it is contended by learned Senior Counsel for the petitioner that it is indicative of the fact that the competent authority had already arrived at a conclusion on the guilt of the petitioner, the charge sheeted employee and therefore, it would vitiate Annexure-A1. It is also contended that in such circumstances no fair and impartial enquiry could be conducted based on Annexure-A1. In support of these contentions and on various other points urged he relied on various decisions of the Hon'ble Apex Court such as **Khemchand v. Union of India** (AIR 1958 SC 300),

A.R.S.Choudhury v. Union of India (AIR 1956 Cal. 662), Hans Raj Gupta v. State of Punjab (1992 (1) SLR 146 (P&H)), Punjab National Bank v. Kunj Behari Mishra ((1998) 7 SCC 84), P.V.Mahadevan v. MD.T.N.Housing Board ((2005) 6 SCC 636), M.V.Bijlani v. Union of India ((2006) 5 SCC 88), Government of Tamilnadu v. K.N.Ramamurthy ((1997) 7 SCC 101) & Ranjit Thakur v. Union of India ((1987) 4 SCC 611). It is also contended that Annexure-A1 memorandum of charges dated 17.4.2015 is nothing but a replica of the letter dated 30.11.2011 viz., Annexure-A10 and it would reflect non-application of mind on the issue including on the contents of his letter dated 6.2.2012 viz., Annexure-A12. He relied on the decision of the Hon'ble Apex Court in **Government of Tamilnadu v. K.N.Ramamurthy ((1997) 7 SCC 101)** to contend that the charge sheet is liable to be declared as invalid on the aforesaid ground. Evidently, the petitioner has also attributed malice and bias on the third respondent besides contending that it violates Articles 14 and 21 of the Constitution of India. In fact, all the aforementioned contentions were raised before the Tribunal. The learned counsel who appeared for respondents 1 and 2 therein resisted the aforesaid contentions and submitted that the Original Application was premature. In elaboration of the same, evidently, it was contended that the petitioner was only charge sheeted and on

receipt of Annexure-A1 he had not filed his written statement of defence, but rushed to the Tribunal raising the aforesaid contentions which could not be gone into at the present stage of disciplinary proceedings. It was after considering the aforesaid contentions that the impugned order was passed. Before considering the tenability of the said contentions with reference to the factual matters it is only apropos to consider the question whether Annexure-A1 and all proceedings incidental thereto, invite interference on the ground that there occurred inordinate delay in the matter of initiation of disciplinary proceedings on the alleged incidents mentioned under Articles I and II, in the light of the decision of the Hon'ble Apex Court in **N.Radhakrishnan's** case (supra).

8. As a matter of fact, the Tribunal had considered the contentions raised by the petitioner attributing inordinate delay in the matter of initiation of disciplinary proceedings against him. After considering the explanation offered by the respondents for the delay and also the materials on record, the Tribunal evidently arrived at the conclusion that there occurred no undue or unexplained delay and the delay, if any, had occurred only due to the time taken for complying with the procedural formalities. In short, the Tribunal repelled the contentions made by the petitioner on the ground of inordinate delay in initiation of disciplinary proceedings.

9. In the aforesaid circumstances, while considering the aforesaid question it is only worthy to bear in mind paragraph 19 of the decision in **Radhakrishnan's** case (supra), extracted hereinbefore. The Apex Court held therein that in considering whether delay had vitiated disciplinary proceedings the court had to consider the nature of the charge, its complexity and on what account the delay had occurred. Regarding the nature of the charge, on going through Annexure-A1, we have no hesitation at all to hold that it is grave and serious, in fact, very grave and very serious, in nature. We will elaborate it. As can be seen from Annexure-A1 it pertains to incidents allegedly occurred when the petitioner was holding the post of Additional Director of Income Tax (Investigation). He is still in service. Obviously, at the relevant point of time, the petitioner was holding a very high post, in fact, a key post in the Income Tax Department. Going by Article I, while holding such a higher and responsible post in the Department of Income Tax he abused his official position, during November, 2009 to May, 2010, to get possession of certain confidential documents kept in the file of Air Intelligence Unit (AIU), Mumbai concerning one Shri.Davinder Ahuja who was intercepted at Zahar Airport on 26.9.2009, with the intention of obtaining identity of the informant. Going by the imputation, the identity of the informant was leaked to the assessee Shri.Davinder

Ahuja and subsequently copies of confidential documents contained in the interception file were found in the business premises of Shri.Davinder Ahuja during the survey action on 11.5.2010. Going by Article II in Annexure-A1, the petitioner had committed serious misconduct and showed lack of integrity by unauthorisedly sharing the contents of the informant's letter dated 30.4.2010 with Shri.Davinder Ahuja, the assessee through Shri.Mohit Kapoor, a retired IRS officer. Thus, it is evident that against the petitioner who was holding a higher and responsible post in the department the imputation levelled is that he was instrumental to the leakage of identity of the informant as also the contents of the informant's letter dated 30.4.2010 to the assessee concerned viz., Shri.Davinder Ahuja. Going by Article I in Annexure-A1 (see para 4 of Article I) the informant had informed that the said Davinder Ahuja had threatened him with dire consequences for providing information about his off-shore accounts to the investigation wing and that at that point of time the source of leakage was not known. It is taking into account the imputation, the post held by the petitioner and the department in which he held that post, the consequences including the damage to the reputation of the department and host of other factors that, we made the aforesaid observation. In short, we got no doubt in our mind that the nature of misconduct alleged against the petitioner is

very grave and very serious, in nature.

10. Going by paragraph 4 of Article I in Annexure-A1 the department was informed by the informant concerned that the information provided by him to the department had been leaked to Shri.Davinder Ahuja, the assessee who was intercepted on 26.9.2009 and thereupon, Davinder Ahuja had been threatening him with dire consequences for providing information about his off-shore accounts to the investigation wing and further that at that point of time the source of leakage was not known. When that be so, it is evident that the genesis of the present proceedings is the leakage of information regarding the identity of the informant to the assessee concerned and also the action in unauthorised sharing of the contents of informant's letter dated 30.4.2010 with Shri.Davinder Ahuja, the assessee, through Shri.Mohit Kapoor, a retired IRS officer. It is pertinent to note at this juncture that at the initial stage the source of leakage was absolutely unknown. Taking into account the serious nature of the imputation as mentioned hereinbefore, hurried steps were not resorted to and in fact, such steps could not have been initiated when the source itself was unknown as they could be initiated only on finding involvement of any of the officers of the department in that matter. The fact that the identity of the informant was leaked itself is sufficient to spoil the reputation of the department and therefore,

when cautious approach was taken to identify the delinquent and if delay had occurred in that matter it cannot be a matter and reason for stifling proceedings initiated subsequently, especially when the preliminary inquiry prima facie reveals the involvement of a higher officer in such a matter. In short, considering the complexity of the issue, especially at the initial stage and the nature of the imputation and the aforesaid factors we are also of the view that those aspects also have to be taken into consideration when such matters and aspects were offered as explanation for the delay.

11. The case of the petitioner is that though such aspects are exponible by the department they had failed to give satisfactory explanation for the long delay. Therefore, the question is whether there is inordinate delay and if so, whether the official respondents offered explanation for the delay. The learned counsel appearing for the respondents submitted that the delay was explained in the additional counter affidavit dated 18.1.2018. It is submitted that after explaining the aforesaid aspects in paragraph 3 it is stated that time was taken to follow the procedures. In paragraph 3 therein it is stated thus:-

“3. Once again the background facts of the case are stated as under:

- i. A complaint dated 16/5/2010 against Shri.Shantam Bose was made by DGIT(Inv.), Mumbai to Member (Investigation) CBDT, New Delhi.

- ii. This office vide letter dated 21/6/2010 requested DIT(Vig.), West Zone, Mumbai to examine the matter and asked detailed report along with his recommendation.
- iii. Subsequently, DGIT(Inv.), Mumbai vide report dated 20/7/2010 addressed to Member (Inv.) and copy endorsed to DGIT(Vig.) has held that the Shri.Shantam Bose is guilty of 'Breach of Conduct Rule'.
- iv. The office vide letter dated 4.8.2010 asked DIT (Vig.), West Zone, Mumbai to examine the issue and give his comments/ recommendation on the clarification sought by the DGIT(Inv.).
- v. After examining the issue, the DIT(Vig.), West Zone, Mumbai submitted report vide letter dated 20/7/2011.
- vi. Further clarification on the matter was sought vide letter dated 7/9/2011 from DIT (Vig.), West Zone.
- vii. The DIT(Vig.), West Zone submitted his report vide letter dated 3/10/2011.
- viii. After obtaining the version of the CO the DIT (Vig.), West Zone submitted his report vide letter dated 7.11.2013.
- ix. After examining the report of the DIT(Vig.), West Zone, Chairman, CBDT has given approval on 15/12/2014 to refer the matter to CVC for first state advice.
- x. The CVC after examining the issue, vide its OM No.014/TTX/049/274955 dated 10/2/2015 had advised for initiation of major penalty against Shri Shantam Bose, CIT.
- xi. The advice of the CVC was examined by DA, who after considering the entire fact on record, has given approval for initiation of major penalty proceedings

against Shri Shantam Bose, CIT and also approved the draft charge sheet dated 8/4/2015.

xii. Charge sheet dated 17/4/2015 was issued to Shri Shantam Bose."

12. We have already taken note of the fact that the source of leakage of information regarding the identity of the informant was unknown at the initial stage and considering the nature of the complaint we do not think it proper to put blame on the department for having proceeded with the matter carefully and cautiously. The identity of the informant from the officials of the department in the higher level if leaked to public it will certainly dissuade persons from passing on informations to the department and in such circumstances, it would definitely hamper the smooth and effective functioning of the department. Therefore, a cautious and careful approach in the matter was inevitable to begin with. While taking into consideration the fact that complaint was not only about leakage of information regarding the identity of the informant to the assessee but also with respect to the subsequent threat to the life of the informant from the assessee, and also about the leakage of the contents of the informant's letter to the assessee concerned, we are of the view that the time taken for identifying the delinquent and then arriving at a prima facie conclusion regarding the nature of his involvement cannot be taken as vital and fatal so as to cause prejudice to the delinquent employee or

to hold that despite such situation the delay should be taken as sufficient to stifle the proceedings abruptly. In short, in such circumstances and taking into account the period of alleged delay the explanation cannot be said to be unsatisfactory and in fact, in the circumstances obtained in this case, it cannot be taken that there occurred inordinate delay. So also, in the circumstances, we do not find any reason to hold that the authorities were not serious in initiating disciplinary proceedings or in pursuing with the charges against the petitioner. The delay occurring in the matter of conduct of disciplinary proceedings since the filing of the Original Application cannot be a reason available to the petitioner to contend against the continuation of the disciplinary proceedings initiated under Annexure-A1. In short, on the ground of delay the disciplinary proceedings initiated against the petitioner invite no interference.

13. Now, we will proceed to consider whether the disciplinary proceedings based on Annexure-A1 invites interference and an abrupt termination on any other ground. As noticed hereinbefore, in view of what is stated in paragraph 23 of Annexure-A1 it is contended by the petitioner that they would go to show that the authority concerned had already arrived at the conclusion that the petitioner is guilty of the charges levelled against him. According to the petitioner, in such circumstances, continuance of disciplinary

proceedings would tantamount to post decisional hearing and at any rate, its continuance would be a farce. Evidently, the contention is founded on certain recitals in paragraph 23, as extracted hereinbefore. But, for the fitness of things, at the risk of the petitioner, we are referring to the relevant recitals and they read thus:-

"The whole sequence of events and the phone calls intercepted in the Data Bank establish the role of Shri.Shantam Bose in leaking confidential information in the case of Shri.Davinder Ahuja. By the above acts, Shri.Shantam Bose, the then Addl. Director of Income-tax (Inv.), Mumbai thus failed to maintain absolute integrity and showed lack of devotion to duty and exhibited conduct unbecoming of a Government Servant thereby contravening the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

Relying on the decision in **Hans Raj Gupta v. State of Punjab (1992 (1) SLR 146 (P&H))**, it is contended by the learned Senior Counsel that the proposed enquiry would be a farce owing to the above specific finding of guilt against the petitioner in Annexure-A1 articles of charge.

14. A perusal of the impugned order would reveal that the above contention was considered in detail by the Tribunal. On such scanning, virtually, the Tribunal arrived at the conclusion that the contention is bereft of any basis as such imputations were incorporated in the articles of charge only to explain the offending acts allegedly committed by the petitioner. It is only to make the

imputation specific and clear that it was so stated therein. The Tribunal further observed that an incorrect use of words in such a manner cannot be taken as a final conclusion of the authority on the allegation made in Annexure-A1 charge. The Tribunal also observed that virtually, such imputation was made so as to enable the charge sheeted officer to understand and defend the charges properly. Assigning such reasons the Tribunal declined to uphold the aforesaid contention. In such circumstances, the question is whether the contention of the petitioner that continuance of disciplinary proceedings would tantamount to a post decisional hearing and it would also be a farce, can be sustained. We have already referred to the relevant recital in paragraph 23 of Annexure-A1 that persuaded the petitioner to raise such a contention. While considering the tenability of the said contention it is only apropos to refer to certain other aspects which may also be relevant for considering certain other contentions of the petitioner. Evidently, a preliminary enquiry was conducted and certain materials were collected for the purpose of identifying the officer connected to the issue in question and also to decide whether disciplinary action need be initiated against the erring officer. In the case on hand, in view of various aspects which we have already dealt with, we are of the considered view that the respondents were perfectly justified in conducting a preliminary

enquiry in that regard. As noticed hereinbefore, on obtaining the complaint of the informant, a preliminary enquiry became highly necessary since it was not known, at that point of time, as to who was the officer involved in the issue of leakage of the information passed on by the informant to the department as also the identity of the informant, to the assessee concerned. It is only after the preliminary enquiry such aspects were unearthed and Annexure-A1 itself would reveal that it contained a list of 28 documents to be used, to bring home the charge levelled against the petitioner. A number of persons are also proposed to be examined. There can be no doubt those documents are to be brought on record, in accordance with law, before considering how many of them are relevant and admissible for the purpose of the enquiry and the evidence of witnesses are also to be appreciated. In such circumstances, the use of such words in the articles of charge can only be taken as nothing but an imputation which is sought to be proved against the petitioner in the disciplinary proceedings and at any rate, as held by the Tribunal, merely because the imputation was unhappily worded as above, cannot be a reason to hold that already a conclusion was arrived at by the authority regarding the guilt of the petitioner. So long as they are not vague, the imputation therein could be a subject matter for the enquiry. The very purpose of a detailed enquiry is to find out the correctness or

otherwise of such imputations raised based on the preliminary enquiry, with the participation of the delinquent officer in accordance with the prescribed procedures. Whether all the materials collected during the preliminary enquiry are admissible and acceptable for the purpose of proving the alleged misconduct can only be decided in the final enquiry. In such circumstances, taking note of the objectionable part of the recital in paragraph 23 as referred hereinbefore, we do not find any reason to disagree with the conclusions arrived at by the Tribunal that they are nothing but imputations, the verity or otherwise of it could be proved only at the final enquiry. At any rate, merely because the imputations are couched in such a manner in paragraph 23, that by itself cannot be a reason to terminate the proceedings abruptly. Still, as an abundant caution we make it clear that those extracted recital shall not be taken as conclusions against the petitioner and they shall be regarded only as prima facie view for the purpose of initiation of disciplinary proceedings and sought to be proved against the petitioner at the enquiry. We are also of the view that the Tribunal has rightly analysed the applicability of the decision of the Apex Court in **Hans Raj Gupta's** case (supra) and arrived at the rightful conclusion that in the case on hand the said decision is not applicable in view of the factual position obtained as mentioned hereinbefore.

15. A careful consideration of the pleadings of the petitioner and the arguments advanced would reveal that the petitioner is also attempting to establish that the charges levelled against him are baseless. The petitioner also attributes malice and bias on the third respondent. Evidently, such contentions were also raised before the Tribunal. Nonetheless, the Tribunal declined to go into such questions holding that it would be too early or premature for the Tribunal to judge the correctness or otherwise of the charge or the events which led to the framing of the charge against the petitioner. After going through the charges under Articles I and II the Tribunal held that they are very serious. We have already held that the charges levelled against the petitioner are very serious. It is taking note of the fact that they pertain to leakage of information regarding the identity of the informant as also the details of the information passed on by the informant to the assessee from a higher officer of the department coupled with the case of the complainant- informant that the leakage of such aspects led to threat to his life that we opined that the charges levelled against the petitioner are very serious. We may hasten to add that we shall not be understood to have held that the petitioner is responsible for the same or that he has actually committed the offending acts levelled against him. Certainly, as observed by the Tribunal, they are matters of enquiry.

However, we are clear in our mind that such serious allegations are not only matters worthy to be enquired into but are matters which could not go unenquired with all seriousness, for the maintenance of clear and honest administration. Recurrence of such incidents would certainly malign the credibility of the department and they could be curbed only by finding out the verity of the allegations in disciplinary proceedings conducted in accordance with law and by handing over comeuppance, in case they are proved against the charge sheeted officer.

16. After the initiation of proceedings the petitioner was promoted to the post of Commissioner of Income-tax (Appeals) as per order dated 12.1.2012. According to him, the factum of his promotion to higher post is indicative of the fact that the official respondents are not considering the charges levelled against him as grave enough to warrant imposition of a penalty of withholding of promotion, even in case they are proved. In fact, a contention on the aforesaid lines is taken up in paragraph 13 of the Original Petition. We are not inclined to accept the said contention. Granting such a promotion cannot be taken as an indicative of the opinion of the competent authority that even in case the charges levelled against him under Annexure-A1 are proved they would not call for imposition of penalty of withholding the promotion. The stage of deciding the

question of quantum of penalty would reach, in respect of serious charges, only after conclusion of enquiry, subject to its outcome, consideration of the same by the disciplinary authority and also after receiving the explanation of the delinquent officer on being served with the copy of the enquiry report. At any rate, it cannot be pre-determined in a case of this nature. Various factors may waive with the authorities in granting such promotion pending the disciplinary proceedings. In the case on hand, the materials on record would reveal that even Annexure-A10 was actually served on the petitioner only on 5.7.2012 and he was granted 15 days from the date of receipt of the same to give his version on the issue. As noticed hereinbefore, the petitioner replied through Annexure-A12 and in Annexure-A12 he had craved leave to amend Annexure-A12, or add other items of information and documents in case it is required to give his version of events and facts in a better manner. In such circumstances, if promotion was granted to him on 12.1.2012, in spite of the issues involved, that by itself is no reason to canvass the position that it was granted to him based on such a conclusion/opinion that even in case he is to be punished based on the outcome of the disciplinary proceedings imposition of penalty of withholding the promotion is not warranted. The petitioner is fortunate to obtain such a promotion after the initiation of disciplinary proceedings under Annexure-A1.

Certainly, that cannot be a reason to raise a contention as aforesaid. Even according to the understanding of the said situation by the petitioner, his case is only that the first respondent is not considering the charge as grave enough to warrant withholding of petitioner's promotion. Hence, he cannot canvass the position that disciplinary proceedings initiated under Annexure-A1 should be discontinued abruptly, for that reason.

17. A scanning of the contentions raised in the original petition as also the arguments advanced on behalf of the petitioner would reveal an attempt on the part of the petitioner to assail the sustainability of the charges on merits, to certain extent. According to the petitioner, the charges contained only ill-founded allegations. We have no hesitation to hold that the Tribunal had very rightly held that it would be too early, in other words premature, to go into such aspects and essentially, the hollowness or otherwise of the allegations could be found out only in appropriately conducted disciplinary proceedings. At any rate, based on the said fact the petitioner cannot claim for quashment of Annexure-A1 memorandum of charges.

18. The question whether Annexure-A1 charge sheet is to be quashed or not was considered by the Tribunal with reference to a catena of decisions, as can be seen from the impugned order. According to us, the Tribunal has rightly referred to the decision of the

Apex Court in **State of Orissa & Anr. v. Sangram Keshari Misra & Anr. ((2010) 13 SCC 311)** to decide on that issue. The Apex Court held therein that normally, a charge sheet could not be quashed prior to the conclusion of the enquiry on the ground that facts stated in the charge are erroneous. Correctness or truthfulness of the charge is a matter to be found out by the disciplinary authority. The Tribunal also referred to the decision of the Apex Court in **Union of India & Ors v. Upendra Singh ((1994) 3 SCC 357)** to support its view. After referring to certain other decisions as well, evidently, the Tribunal opined that in a case where charge sheet is issued without jurisdiction or that it is wholly illegal it could be interfered with. At the same breath, evidently, the Tribunal held that in the case on hand Annexure-A1 is not attacked on the ground that it was issued without jurisdiction and that it was wholly illegal. Annexure-A1 is only the rightful conclusions arrived at based on the binding judicial pronouncements and in view of the factual situation obtained in this case. In view of our finding that the charges levelled against the petitioner under Annexure-A1 are very serious and there is no inordinate or unexplained delay in initiation of disciplinary proceedings and also that the allegations are of such nature that they call for an enquiry, we are of the considered view that adverting to the contentions touching the merits of the issue and making any

observation may ultimately prove prejudicial to the petitioner. Hence, we are refraining ourselves from doing so.

The upshot of the discussion as above, is to the effect that we do not find any compelling reason to interfere with the order passed by the Tribunal in O.A.No.726 of 2015 and to bring about an abrupt termination of disciplinary proceedings by setting aside Annexure-A1 and incidental proceedings. At the same time, we are of the view that no further delay can be brooked in the matter of disciplinary proceedings initiated under Annexure-A1 and hence, it shall be concluded as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment. The petitioner shall also co-operate with the authorities to complete the said proceedings within the above stipulated period. In view of the reasons mentioned hereinbefore, the Original Petition lacks merits and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

Sd/-
V.G.ARUN
Judge

TKS