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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C).8653/2010 & CM.APPL 22005/2015(stay)

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Judgment reserved on 11th July, 2016
Judgment pronounced on 5th August, 2016

VIJAY KUMAR VERMA Petitioner

Through : Mr.A.K. Behera, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through : Mr. Vivek Goyal, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J

1. Challenge in this writ petition is to the order dated 22.2.2010 passed by Central Administrative Tribunal (hereinafter referred to for short as '*the Tribunal*') in O.A. No.1864/2008 and the order dated 6.8.2010 passed by the Tribunal in Review Application No.121/2010. By the impugned orders dated 22.2.2010 and 6.8.2010, O.A. No.1864/2008 and Review Application No.121/2010, respectively, filed by the petitioner herein stand dismissed.
2. The necessary facts to be noticed for disposal of this writ petition as stated by the petitioner are that the petitioner was as an Advocate on Record in the Supreme Court with almost 19 years of standing. He was appointed as a Deputy Government Advocate under the Ministry of Law & Justice, Government of India after being selected by the Union Public Service Commission(UPSC) on 03.06.1991.
3. During his tenure, the petitioner being eligible, was offered for appointment as a Presiding Officer in the Debts Recovery Tribunal (hereinafter referred to for short as '*DRT*'), a judicial body established

under the Debts Recovery Tribunal Act, 1993, which was established for adjudication of matters relating to recovery of debts of banks and other public financial institutions. The selection for the Presiding Officer was held by a sitting Judge of the Supreme Court of India. The petitioner was selected and joined as Presiding Officer, DRT at Ahmedabad on 09.04.1999. His appointment was duly notified on 12.04.1999. His appointment was for a period of five years or till he attained the age of 62 years, whichever is earlier. The petitioner was appointed as a Presiding Officer for five years on deputation to enable him to return to his parent Department after completing his tenure of five years. The petitioner completed his tenure and joined back on 15.04.2004. The Removal and Conditions of Service of Presiding Officer in DRT is governed by the Debts Recovery Tribunal Act, 1993.

4. Further as per the writ petition during the tenure of the petitioner as Presiding Officer, a staff car driver, namely, Shri S.B. Nair, had been attached with the petitioner. The said staff car driver always indulged in insubordination. He was also in the habit of coming late and persistently false complaints against the Registrar DRT, the petitioner and other officers of the DRT. Thus, the petitioner being the competent disciplinary authority was constrained to suspend him vide order dated 8.3.2002 and draft charges were sent to the nodal ministry i.e. Ministry of Finance. Since S.B. Nair was making false complaints against the petitioner, the petitioner, in compliance of the principles of natural justice, vide his letter dated 2.5.2002 made a request for appointment of an *ad hoc* disciplinary authority. On the basis of the said request of the petitioner, the competent authority appointed the Presiding Officer of DRT II, Mumbai, as the *ad hoc* disciplinary authority, who conducted the enquiry and found the said staff

car driver guilty of misconduct and on such findings the *ad hoc* disciplinary authority dismissed the S.B. Nair, staff car driver, from service.

5. During the pendency of the departmental enquiry and while he was under suspension, S.B. Nair made a complaint against the petitioner vide letter dated 20.4.2002, which the petitioner claims was back dated. A copy of the said complaint was also marked to the Prime Minister of India and the Chairman, DRAT. The Chairman, DRAT, sought a reply from the petitioner. The petitioner submitted his reply on 5.6.2002. Upon examination of the said reply the Chairman, DRAT, found the complaint of S.B. Nair to be frivolous and with malicious intentions and did not take any action on that complaint. Nearly two years thereafter, the petitioner completed his statutory tenure as a Presiding Officer, DRT, on 8.4.2004 and returned to his original department. The petitioner was due to superannuate on 31.7.2007. Just about a week prior to his superannuation, the respondent/UOI served a Memorandum of Charge dated 19.7.2007 under Rule 14 of CCS (CCA) Rules, 1965, to the petitioner pursuant to the said malicious complaint made by S.B. Nair, on which complaint the Chairman, DRAT, was already of the view that the said complaint was a frivolous one and was filed with a malicious intention. The petitioner thereafter challenged the said Memorandum of Charge dated 19.7.2007 by filing O.A.No.1864/2008 before the Tribunal. The petitioner primarily urged the following two grounds before the Tribunal:

- (i) As a Presiding Officer of DRT, the petitioner was discharging his judicial functions under the superintendence and control of the Chairperson of DRAT. All alleged misconduct or misbehaviour relating to the said tenure is subject to DRT Act, 1993, a specific Act. Besides, the petitioner was not holding any 'Civil Post' during his

statutory tenure as a Presiding Officer. Thus, the petitioner cannot be subject to a disciplinary proceeding under the CCS (CCA) Rules 1965.

A corollary of aforesaid submission was that when there is a specific provision i.e. DRT Act 1993 then no other act or rule can be attracted in view of Section 34 of the DRT Act 1993.

(ii) Even the contents of the Memorandum of Charge as drawn against the petitioner do not amount to any misconduct as it is understood in service jurisprudence.

6. It is pointed out by learned counsel for the petitioner that the Tribunal had granted stay during the pendency of the O.A. but finally vide impugned order dated 22.2.2010 dismissed the O.A. without considering the second ground at all and deciding the first ground in favour of the respondents.
7. Aggrieved by the impugned order dated 22.2.2010 passed by the Tribunal, the petitioner filed the present writ petition. By the order dated 24.12.2010 stay of enquiry, initiated against the petitioner, was granted.
8. Mr. Behera, learned counsel for the petitioner, has contended that the impugned Memorandum of Charge dated 19.7.2007 issued under CCS (CCA) Rules, 1965, is illegal. Counsel has further contended that during the statutory tenure of the petitioner as Presiding Officer, DRT, he was not under the supervision and disciplinary control of the Central Government. It is contended that the post of the Presiding Officer, DRT, being a judicial and adjudicatory post, the Parliament has kept the post outside the purview of the supervision and control of the Central Government. Such power of superintendence and control has been statutorily conferred on the Chairperson, DRAT, vide Section 17-A of the Act. Counsel has further contended that as regards of inuring into misbehaviour (misconduct) or incapacity of the Presiding Officer, separate provision in the form of

Section 15(2) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, provides for inquiry by a sitting Judge of a High Court. The scheme of the said Act clearly bars the power of supervision and control of Presiding Officers by the Central Government. Thus, the question of Central Government issuing any charge sheet for alleged misconduct or misbehaviour in respect of work discharged as a Presiding Officer does not arise.

9. It is next contended by learned counsel for the petitioner that the post of Presiding Officer, DRT, is not a 'Civil Post', nor is the holder of the said post '*a Government Servant*'. Thus, by virtue of Section 3(1) of the CCS(CCA) Rules, 1965, the said Rules are not applicable in respect of Presiding Officer, DRT. Besides, Rule 3(1)(e) of CCS (CCA) Rules, 1965, makes it clear that '*matters covered by any special provision*' are excluded from the purview of CCS (CCA) Rules, 1965.
10. Reliance has been placed on Section 15(2) which deals with '*inquiry in regard to misbehaviour or incapacity*' in respect of a Presiding Officer, DRT. Thus, by application of Rule 3(1)(e) of the CCS (CCA) Rules, 1965, the Presiding Officers of the DRT are outside the purview of the said Rules.
11. Mr.Behera has next contended that Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, gives an overriding effect to the provisions of the Act over the CCS (CCA) Rules, 1965. It is also contended that the 1993 Act is an Act of Parliament whereas CCS (CCA) Rules, 1965, is a subordinate legislation. Thus, the provisions of Section 34 will prevail and no proceeding can be initiated against the petitioner under CCS (CCA) Rules for the alleged misconduct during his statutory tenure as a Presiding Officer, DRT.

12. In support of his contentions, learned counsel for the petitioner has relied upon a decision rendered by the High Court of Delhi in the case of *UOI V. Shiv Charan Sharma*, reported at 2007 IX AD (DELHI) 296. Reliance has also been placed upon a decision rendered by the Madhya Pradesh High Court in W.P.No.4395/2008 titled as *Gowardhan Parasram Motwani v. Union of India and Others*.
13. Mr.Vivek Goyal, learned counsel for the respondents, has primarily advanced four submissions to justify the impugned judgment. It is submitted that the provisions of Section 15 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, are only applicable when a serving Presiding Officer of a Tribunal is to be removed from service. Thus, the said provisions do not have any bearing in the present case. It is further submitted that the special provisions only relate to the removal while serving as a Presiding Officer. Since the petitioner has already completed his tenure as a Presiding Officer, the provision regarding his removal from the post has no meaning in the instant case.
14. It is also contended that the petitioner was serving on deputation to DRT and the moment the petitioner had joined back his parent department, the provisions of DRT Act became irrelevant and the protection claimed by the petitioner was therefore misconceived.
15. It is further submitted by Mr.Goyal that the petitioner was in Government service throughout. Therefore, if the petitioner is governed by Pension Rules, he cannot dodge an enquiry under the CCS (CCA) Rules as well, as the inquiry is to be conducted as per the Rules. Thus, the proceeding initiated against the petitioner cannot be termed as *non est* or the one suffering from jurisdictional deficiency.
16. It is also contended by Mr.Goyal that the CBI after conducting an investigation into the matter had stated in its report that the applicant had

abused his official position while working as a Presiding Officer in DRT, Ahmedabad. In view of this, a charge sheet was issued against the petitioner on the basis of CBI report as well as the advice given by the CVC. Accordingly, the impugned departmental proceedings were initiated against the petitioner and charge sheet was issued to him under Rule 14 of the CCS (CCA) Rules, 1965. It is further contended that as per Rule 69 of CCS (Pension) Rules, 1972, in case where departmental or judicial proceedings are pending against an officer, no gratuity would be payable to the Government Servant until the conclusion of the Departmental or judicial proceedings and issue of final order. It is next contended that Rule 9 of CCS (Pension) Rules, 1972, further provides that where the disciplinary proceedings have been instituted, while the Government Servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

17. In support of his submissions, Mr.Goyal has relied upon *S. Govinda Menon v. UOI*, reported at AIR 67 sc 1274; *A.K. Shrivastava v. State of UP and Ors.*, reported at 1980 (1) SLR 369; and *Khemi Ram v. State of Punjab*, reported at AIR 1976 SC 1737.
18. We have heard learned counsel for the parties and considered their rival submissions. The primary issue that arises for consideration in the instant writ petition is whether a charge-sheet under CCS (CCA) Rules, 1965, is valid and lawful in respect of alleged misconduct(s) committed by the petitioner during his statutory tenure under the DRT Act, 1993, as a Presiding Officer of DRT from 9.4.1999 to 8.4.2004.

19. It may be noted that the complaint made against the petitioner herein pertains to a period when he was functioning as a Presiding Officer of Debts Recovery Tribunal from 9.4.1999 to 8.4.2004 and he was discharging his judicial functions under the supervision and control of the Chairperson, DRAT, as provided in the 1993 Act. It may also be noticed that in the concluding portion of the report of CBI, a copy whereof has been filed, it has been observed that “*as on date no case is made out against the suspect*”. Concluding portion of the report reads as under:

“5) *Recommendation:*

.....

1.

2. *transfer the suspect to some other DRT for more effective verification in his conduct as well as in the assets allegedly created by the suspect and favours shown by him.*

As on date, no case is made out against the suspect.”

(Underline added)

20. It has been strongly urged before this Court that since the issue is with regard to the applicability of the CCS (CCA) Rules, 1965, to the misconduct of the petitioner at the time when he was holding a judicial post the CBI report and the CVC recommendations would have no bearing to the adjudication of the present dispute. Resultantly, the issue, which would require consideration is whether the CCS (CCA) Rules, 1965, could have been invoked by the Central Government for conducting a disciplinary enquiry against the petitioner in respect to alleged misconduct committed by him during his statutory judicial tenure as a Presiding Officer of the DRT.

21. Strong reliance has been placed by learned counsel for the petitioner on a decision rendered by a Coordinate Bench of this Court in the case of *UOI v. Shiv Charan Sharma* (supra) in support of his submission that in the

said case the issue was whether the Presiding Officer of the National Highway Tribunal was holding a 'Civil Post' or not. In paras 5 to 12 of the said judgment, the Court examined the National Highway (Land & Traffic Act) 2002 and taking into consideration primarily the fact that the functions of National Highways Tribunal is adjudicatory function, it was held that the said post is not a Civil Post. Paras 20 and 21 of the judgment read as under:

“20. From the above observations it is concluded:

(a) National Highways Tribunal is a creation of Statute i.e. The Control of National Highways (Land & Traffic) Act, 2002.

((b) Presiding Officer of the Tribunal should either be qualified to be a Judge of the High Court or has been a Member of the Indian Legal Service.

(c) Presiding Officer of the Tribunal is selected by a Selection Committee chaired by a Judge of the Supreme Court of India and two members, one Secretary to the Government of India in the Ministry of Road Transport and Highways and second from the Secretary to the Government of India in the Ministry of Law and Justice (Department of Legal Affairs).

(d) The Selection Committee has the authority to devise its own procedure for selecting candidate for appointment.

(e) On the recommendations of the Selection Committee, the Central Government makes a list of persons selected for appointment as a Presiding Officer. Only person so selected has to be appointed as a Presiding Officer of the Tribunal.

(f) The Presiding Officer of the Tribunal has the jurisdiction, powers and authority to entertain appeals from the orders passed or actions taken by the Highway Administration to the exclusion of any other authority except the Hon'ble Supreme Court and High Court exercising jurisdiction under Article 226 and 272 of the Constitution. The Tribunal has the powers as are vested in civil court under the Code of Civil Procedure

(without any binding force) for the purposes of discharging its functions while trying a suit as specified in the Act in accordance with the principles of natural justice and other provisions of the Control of National Highways Act and Rules.

(g) The Tribunal is independent in its functions and has the powers to regulate its own procedure including the places at which it shall have its sitting.

(h) The Proceedings before the Tribunal are deemed to be judicial proceedings within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code and the Tribunal is deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(i) The orders of the Tribunal are to be executed by a civil court on its directions as if the said civil court has passed the decree.

(j) The Presiding Officer of a Tribunal can be removed only after an inquiry made by a Judge of a High Court on the ground of proved misbehavior or incapacity.

21. *Consequently we are unable to agree with the Tribunal when it held vide its Order dated 24.8.2006 passed in OA No. 757/2006 that it had the jurisdiction to entertain the OA. The functions of the National Highways Tribunal are quasi judicial in nature and, therefore, the post of Presiding Officer of National Highways Tribunal cannot be equated with a civil post. In the absence of notification issued by the Government of India, Section 14(1) of the Central Administrative Tribunal Act cannot be made applicable on the quasi judicial posts or other posts not of a civil nature and other statute bodies which cannot be termed as a civil post.”*

22. *Prima facie*, the provisions of the DRT Act are *peri materia* with the provisions of the National Highway (Land & Traffic) Act, 2002 in respect of National Highway Tribunal. Section 5 of the Act specifies that a person shall not be qualified for appointment appointed as a Presiding Officer of

DRT unless he is or has been or is qualified to be a District Judge. Presiding Officers of DRT are selected by a Selection Committee chaired by a sitting Judge of the Supreme Court of India. Section 6 of the Act prescribes statutory tenure of five years for the Presiding Officer of Tribunal. Section 15(2) makes a provision that any misbehaviour or misconduct in respect of a Presiding Officer, enquiry has to be done by a Judge of High Court. Section 17 of the Act defines the jurisdiction and powers of the Tribunal as adjudication of disputes regarding recovery of debts. Section 17A makes the Chairperson of the Appellate Tribunal the Superintending and Controlling authority of the Presiding Officer of the Tribunal including appraisal of their work and recording of their Annual Confidential Report. Section 22(3) of the Act makes the proceedings before the DRT as deemed judicial proceedings. A combined reading of the aforesaid provisions makes it abundantly clear that the scheme of the Act starting from the appointment of a Presiding Officer makes it abundantly clear that the duties and functions of a Presiding Officer are adjudicatory in nature and work and conduct of the Presiding Officer has been subjected to the supervision and control of the concerned Chairperson of DRAT and for the purpose of inquiry based on misbehaviours or misconduct is subject to inquiry by a High Court Judge of the concerned High Court. The above provisions make it absolutely clear that the post of Presiding Officer of DRT is not a Civil Post it is a judicial post.

23. Reliance is also placed upon a decision rendered in the case ***Gowardhan Parasram Motwani*** (supra) wherein the issue was whether the Presiding Officer, DRT, is a holder of 'Civil Post' was directly involved. The Madhya Pradesh High Court has, on a detailed examination of the provisions of the DRT Act 1993, held that the post of Presiding Officer is not a 'Civil Post'. Paras 10 to 13 read as under:

“10. On a scanning of the anatomy of the 1993 Act it is crystal clear that the petitioner is holding a post under a statute. Section 5 of the 1993 Act deals with qualification for appointment as Presiding Officer.

“5. Qualifications for appointment as Presiding Officer:-

A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless he is, or has been, or is qualified to be, a District Judge.”

Section 15(2) of the 1993 Act which deals with resignation and removal of the Presiding Officer is worth-noting:

15. Resignation and removal.

(1) XX XX XX

(2) *The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after inquiry:-*

a. *In the case of the Presiding Officer of a Tribunal made by a judge of High Court.*

b. *In the case of the Chairperson of an Appellate Tribunal made by a Judge of the Supreme Court, in which the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.”*

11. *Section 17 of the 1993 Act deals with jurisdiction, power and authority of the Tribunal. Section 18 bars the jurisdiction of Courts except that of the Supreme Court and the High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India. Section 19 of the said Act deals with the procedure of Tribunals. Sub-Section 12 of Section 19 confers power on the Tribunal to make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring,*

alienating or otherwise, that the defendant with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him. Sub-section 13(A) clothes the Tribunal with the power to direct the defendant to furnish security on certain conditions precedent being satisfied. The Tribunal has been empowered to attach the whole or part of the properties claimed by the applicant before it, as the property secured in his favour or otherwise owned by the defendant.

12. On appreciating the aforesaid provisions in proper perspective there can be no scintilla of doubt that the Presiding Officer of Debts Recovery Tribunal under the 1993 Act is vested with immense powers. If the scheme of the Act is appreciated in entirety the Presiding Officer is an adjudicating authority enjoying the judicial powers. From the scanning of the anatomy of the Act it is quite clear that a different kind of responsibility has been conferred on the Presiding Officers and efforts have been under the Act to maintain their independence as adjudicating authorities. In this context we may note with profit that there is a set of rules called Debts Recovery Tribunal (Procedure for appointment as Presiding Officer of the Tribunal) Rules 1999. Rule 3 deals with the method of appointment under Sub-Section (1) of Section 4 of the Act. There is a selection committee which consists of the Chief Justice of India or a judge of the Supreme Court of India as nominated by the Chief Justice of India, the Secretary to the Government of India, the Secretary to the Government of India in the Ministry of Finance (Department of Economic Affairs), the Secretary to the Governor of the Reserve Bank of India, Deputy Governor of the Reserve Bank nominated by the Governor of the Reserve Bank and certain other officers. The said rule provides that the Chief Justice of India or the Judge of the Supreme Court shall be the Chairman of the Selection Committee. The Selection Committee has the power to devise its own procedure for conducting interview for selection and appointment of Presiding Officer. Rule 7 deals with oaths of office and secrecy. The said Rule reads as under:

“7. Oaths of office and secrecy:-

Every person appointed to be Presiding Officer under sub-section (1) of Section 4 shall, before entering upon his office,

make and subscribe an oath of office and secrecy in the Forms annexed to these rules.”

13. On the analysis of the provisions of the Act and the Rules there can be no shadow of doubt that the Presiding Officer, Debts Recovery Tribunal, under the 1993 Act cannot be regarded as a person holding a civil post. He cannot be treated to hold a civil post under the Union of India. What would be the effect when the notification issued under Section 14(2) of the 1985 Act need not be gone into as there has been no notification as yet.”

24. We see no reason to take a different view than the view expressed by the Madhya Pradesh High Court in the case of **Gowardhan Parasram Motwani** (supra) and a Division Bench of Delhi High Court in the case of **Union of India** (supra). There is no doubt that the CCS (CCA) Rules, 1965, as defined in CCS (Conduct) Rules, 1964, apply to Government Servants. In Rule 2(b) of CCS (Conduct) Rules, the term ‘Government Servant’ has been defined. Rule 2(b) reads as under:

“2(b) “Government Servant” means any person appointed by Government to any Civil Service or Post in connection with the affairs of the Union and includes a Civilian in a Defence Service.”

25. Rule 3 of the CCS (CCA) Rules, 1965 starts by saying that these Rules shall apply to every “Government Servant”. To be a Government servant one has to be appointed to a “Civil Service” or a “Civil Post”.
26. A combined reading of the said provisions shows that if a person has been appointed to a civil service or post, then only he would come under the purview of CCS (CCA) Rules, 1965. In the impugned judgment of the Tribunal, the Tribunal itself has come to a conclusion that during the period from 9.4.1999 to 8.4.2004 the petitioner was not a Central Government Employee. Thus, it cannot be said that during his statutory tenure as a Presiding Officer, the petitioner was in any ‘Civil Service’ or was holding any ‘Civil Post’.

27. Further, Rule 3(1)(e) of CCS (CCA) Rules, 1965, categorically stipulates that it does not apply to any person for whom special provision is made in respect of matters covered by these rules. It may be noted that matter covered by the CCS (CCA) Rules denote disciplinary enquiry on the basis of alleged misconduct against a Government servant. As far as this aspect of holding an enquiry against Presiding Officer of DRT on the basis of alleged misconduct is concerned, special provision has been made in Section 15(2) of the DRT Act 1993, which stipulates enquiry by a High Court Judge. Further Section 34 of the DRT Act gives overriding effect to the DRT Act over the CCS (CCA) Rules.
28. In view of the aforesaid discussion, we are of the view that CCS (CCA) Rules, 1965, cannot be made applicable to the alleged misconduct committed by a Presiding Officer of a DRT. Additionally, we may say that the scheme of the 1993 Act clearly gives the supervision and control over Presiding Officers of DRT to the Chairperson, DRAT, and not to Central Government. There is a clear legislative purpose behind this. The purpose clearly is that as far as judicial functions are concerned, the same shall be free from executive interference. Separation of judicial functions from the executive functions has been held to be one of the basic structures of the Constitution. Thus, by maintaining the said separation, the Parliament, by Section 17A of the 1993 Act, has given the power of supervision and control of Presiding Officers, DRT to the Chairperson, DRAT. Once this separation is legislatively recognized, the power of initiating disciplinary enquiry cannot be given to the UOI as it would violate the said separation of power which is one of the basic structures of the Constitution of India. Separation has to be maintained at all times irrespective of whether the Presiding Officer has completed his tenure or not. It would be out of place to hold that the respondent/UOI had no disciplinary control over the

Presiding Officer when he is within his statutory tenure but has full disciplinary control over them after their tenure is over in respect of matters during the statutory tenure. That would make the ‘*theory of separation of power*’ a mockery in the eyes of law.

29. In a decision rendered in the case of ***Advocates-on-Record Association and Another v. UOI***, reported at JT 2015 (10) 1, commonly known as NJAC case, the Constitution Bench of the Apex Court in the context of separation of power and independence of judiciary has held as under:

“364. We have given our thoughtful consideration to the above two submissions, dealt with in the preceding two paragraphs. We have already concluded earlier, that the participation of the Union Minister in charge of Law and Justice, as a Member of the NJAC, as contemplated under Article 124A(1), in the matter of appointment of Judges to the higher judiciary, would breach the concepts of “separation of powers” and the “independence of the judiciary”, which are both undisputedly components of the “basic structure” of the Constitution of India. For exactly the same reasons, we are of the view, that Section 8 of the NJAC Act which provides, that the Secretary to the Government of India, in the Department of Justice, would be the convener of the NJAC, is not sustainable in law. In a body like the NJAC, the administrative functioning cannot be under executive or legislative control. The only remaining alternative, is to vest the administrative control of such a body, with the judiciary. For the above reasons, Section 8 of the NJAC Act would likewise be unsustainable in law.”

30. Though the aforesaid judgment has been rendered in the context of appointment of Judges in the High Court and the Supreme Court, the principal of law laid down clearly applies to the issue involved in the present case also. If the impugned Memorandum of Charge is upheld, it would amount to giving disciplinary power over Presiding Officers of DRT to the executive which will jeopardize the independence of judicial functioning.

31. A bare reading of the impugned Memorandum of Charge dated 19.7.2007 shows that there are four Articles of Charges. Articles 3 and 4 deals with loan of Rs.10.00 lakhs and Rs.1.5 lakhs, respectively, taken from the SBI Drive in Road Ahmedabad, which has already been repaid much before the charge sheet was issued. Thus, the same cannot come within the definition of misconduct. Similarly Article 1 deals with two cases decided by the petitioner in OA No.343/1998 and Appeal No.3/2001. Just because the appellate authority modified or varied the order passed by the petitioner, deciding the said OA cannot come within the definition of misconduct. Similarly, Article No.2 deals with appointment of Local Commissioner which is done as per a panel maintained by DRT and appointment from the same panel by no stretch of imagination can be misconduct. It is well settled in service law that every alleged lapse or negligence or behaviour does not constitute 'misconduct' for the purposes of disciplinary proceedings.
32. The Apex Court in the case of *Inspector Prem Chand v. Government of NCT of Delhi*, reported at 2007 (5) SCALE 421, after examining the law on the subject in detail held that 'misconduct' means misconduct arising from ill motive; acts of negligence, errors of judgment or innocent mistakes, do not constitute such misconduct.
33. In the instant case, there is no allegation based on any material to show any 'ill motive' on the part of the petitioner. On the other hand, it is an admitted position that the entire charge sheet is based upon the complaint made by the staff car driver when he was under suspension and was facing disciplinary inquiry. The only witness cited to support the alleged charges is the same staff car driver. The other two witnesses, namely, Branch Managers of SBI of two branches are at the most witnesses only in regard to advance of loan in respect of Articles 3 and 4. In respect of those two

Articles also no ill motive has been alleged as the alleged loan had been repayed much before the issuance of the impugned charge memorandum.

34. In view of the above, the conclusion of the Central Administrative Tribunal in the impugned order that in regard to the alleged misconduct during his tenure as a Presiding Officer, DRT, the petitioner cannot be subject to disciplinary proceedings under the CCS (CCA) Rules 1995 which is applicable to the holder of a civil post, is clearly faulty. In fact the Tribunal did not examine the law as laid down by this High Court in the case of *Union of India v. Shiv Charan Sharma* (supra) as well as the law laid down in the case of *Gowardhan Parasram Motwani* (supra) and therefore arrived at a wrong conclusion.
35. As far as the judgments rendered in *S. Govinda Menon v. UOI*, reported at AIR 67 SC 1274; *A.K. Shrivastava v. State of UO & Ors.*, reported at 1980 (1) SLR 369; and *Khemi Ram v. State of Punjab*, reported at AIR 1976 SC 1737, relied upon by the respondents are not relevant to the facts of the present case and issue involved in the present case. In all those three cases the employee who was holding a civil post had gone on deputation to another 'Civil Posts' and after he came back from deputation, disciplinary proceedings were initiated by his parent employer and when challenged, the Courts upheld the said action. But in the instant case, the distinguishing feature is that the petitioner who was holding a Civil Post had gone on deputation to a 'judicial post' with a statutory tenure which also separately prescribed the supervising and controlling authority. Thus, the factual situation in which the said three judgments have been delivered are quite distinguishable and are not applicable to the facts of the present case.
36. In the light of above conclusion and case laws, the arguments of the counsel for the respondents that the Special Provisions made in the Recovery of Debts Due to Bank and Financial Institutional Act, 1993, are

only applicable to the serving Presiding Officer of DRAT and not after the tenure is over is not sustainable. Similarly, after the tenure is over whether the applicant joined back a Government department or not has also not relevant as the subject matter of inquiry in the instant case pertains to the statutory tenure of the petitioner while he was working as Presiding Officer, DRT, under the supervision and control of Chairperson, DRAT.

37. Besides whether the petitioner was holding a civil post before this tenure as Presiding Officer DRT or after his such tenure is of no consequence as the subject matter is strictly confined to his statutory tenure for which the supervising and controlling authority has been prescribed by an Act of Parliament but also the enquiry authority in regard to misbehaviour and misconduct has been specifically prescribed.
38. In view of the above analysis, the petition is allowed. The impugned judgment dated 22.2.2010 passed by the Tribunal in OA No.1864/2008 is quashed and set aside. Consequently, the order dated 6.8.2010 in RA No.121/2010 is also quashed and set aside. Further the charge sheet dated 19.7.2007 which had been impugned by the petitioner in the aforesaid OA before the Tribunal is also quashed and set aside with all its consequences. The petitioner shall be given all the consequential benefits following therefrom as per rules and law on the subject within a period of four weeks.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

August 5th, 2016

pst/msr