Appeal Nos.
266 267 of 1993.
From the Judgment and Order dated 8.2.91 & 22.3.91 of the Central Administrative Tribunal Principal Bench, New Delhi in O.A. No. 2540/89 & M.P. No. 219 of 1991.
K.T.S. Tulsi, Additional Solicitor General B. Parthasarthy, P. Parmeshwaran and C.V.S. Rao for the Appellants.
Indu Malhotra for the Respondent.
The Judgment of the Court was delivered by MOHAN, J.
Leave granted.
The respondent, while working as Income Tax Officer, Muktsar during the year 1982 83 completed certain assessments.
A charge memorandum dated 2.5.1989 was served on him to the effect it was proposed to hold an inquiry against him under Rule 14 of the Central Civil Services (Classification, Central & Appeal) Rules, 1965.
A statement of article of charge framed against him was to the following effect : STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST, SHRI K.K. DHAWAN, A GROUP 'A ' NOW POSTED AS ASSISTANT COMMISSIONER OF INCOME TAX, BOMBAY.
Article I Shri K.K. Dhawan while functioning as I.T.O. "A" 300 Ward, Muktsar during 1982 1983 completed nine assessments in the case of : (1) M/s Chananna Automobiles, (2) N/s Gupta Cotton Industries, (3) M/s Ajay Cotton Industries, (4) M/s National Rice Mills, (5) M/s Tek Chand Buchram, (6) M/s Tilak Cotton Industries, (7) M/s Chandi Ram Behari Lal, (8) M/s Phuman Mal Chandi Ram and (9) M/s Modern Tractors in an irregular manner, in undue haste and apparently with a view to conferring undue favour upon the assessees concemed By his above acts Shri Dhawan failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Govt. servant, thereby violating provisions of Rules 3(1) (i), 3(1) (ii) and 3(1) (iii) of the CCS (Conduct) Rules, 1964.
This was accompanied by a statement of imputation of his misconduct or misbehaviour in support of the article of charge framed against him.
In each of the nine cases of the assesses above referred to, the details relating to misconduct or misbehaviour were furnished. Therefore, it was charged that the respondent had violated the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.
The necessary documents in support of these allegations were also enclosed.
Against the said memorandum dt.
2.5.1989, the respondent preferred an application O.A. No. 2540/89 before the Central Administrative Tribunal, New Delhi praying for a stay of the disciplinary proceedings and to consider his case for promotion on merits without resort to the sealed cover procedure.
301 By its order dt.
8.2.1991, Central Administrative Tribunal, Principal Bench, New Delhi directed the respondent Union of India to open the sealed cover immediately and implement the recommendations of the Departmental Promotion Committee in so far as it pertained to the petitioner and to promote him to the post of Deputy Commissioner of Income Tax if he was found fit for promotion within two weeks from

the date of said order.
Thereafter, by a detailed judgment dated 22.3.1991, the Tribunal relying on S.L.P. (C) Nos.
2635 36/89 in Civil Appeal No. 4986 87/90, held that the action taken by the officer was quasi judicial and should not have formed the basis of disciplinary action.
Therefore, the application was allowed and the impugned memorandum dated 2.5.1989 was quashed.
The earlier order dated 8.2.1991 to open the sealed cover and implement the recommendations of Departmental Promotion Committee was made absolute.
Aggrieved by these two orders, the present special leave petitions have been preferred.
The teamed counsel for the appellant Shri K.T.S. Tulsi submits as under: (i) That in a case where disciplinary proceedings are pending against the respondent, the procedure of opening the sealed cover should not have been resorted to.
Otherwise, it would amount to putting a premium on misconduct.
(ii)The Tribunal failed to appreciate the ratio of the order in C.A. Nos.
4986 87/90.
In that case, the enquiry report showed that the charge framed against the officer had not been proved.
That is entirely different from holding that in a case of quasi judicial action taken by the Officer no disciplinary action could be taken.
The true purport of that observation is only to buttress the earlier finding that the charge had not been proved.
Therefore, reliance ought not to have been placed on this ruling which turned on the peculiar facts and circumstances of that case.
302 (iii)Though nine cases were cited in the charge memorandum, only one of the cases had been discussed.
(iv)Lastly, it is submitted that the respondent is charged for violation of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.
Therefore, if the conduct of the respondent could be brought within the scope of the Rules, immunity from the disciplinary action cannot be claimed.
In support of these submissions, reliance is placed on Union of India & Ors.
vs A.N. Saxena, ; In Civil Appeal No. 560 of 1991, the peculiar facts art different; in disregard to the instructions of the Central Board of Direct Taxes, refund of taxes was ordered.
Further, there was no allegation of corrupt motive or to oblige any person on account of extraneous considerations.
Therefore, that ruling is distinguishable.
The respondent would try to support the impugned order contending that the opening of the sealed cover was correctly ordered because on the date when the Departmental Promotion Committee met in March 1989, no charge sheet had been served on the respondent.
The charge memorandum dated 2.5.1989 came up to be served only on 5.5.1989.
Therefore, following the earlier procedure such a direction was given.

This is a case in which the respondent was exercising quasi judicial functions.
If the orders were wrong the remedy by way of an appeal or revision could have been resorted to.
Otherwise, if in every case of wrong order, disciplinary action is resorted to, it would jeopardize the exercise of judicial functions.
The immunity attached to the officer while exercising quasi judicial powers will be lost.
Rightly, therefore, the Tribunal relied on Civil Appeal Nos.
4986 87/90 where this Court took the view that no disciplinary action can be taken in respect of exercising quasi judicial functions.
To the same effect in Civil Appeal No. 560/91 the decision relied on by the appellant namely Union of India & Ors., ; (supra) has no application to the instant case.
The charge memorandum dated 2.5.1989 states as follows 303
MEMORANDUM "The President proposes to hold an inquiry against Shri K.K. Dhawan under Rule 14 of the Central Civil Services (Classification, Central and Appeal) Rules, 1965.
The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge.
" At this stage, we will refer to Rule 3(1)(i) , 3(1)(ii) and 3(1) (iii) of the Central Civil Services (Conduct) Rules, 1964 which are as under Rule 3 (1) : Every government servant shall at all time (i) maintain absolute integrity; (ii) maintain devotion to duty and (iii) do nothing which is unbecoming of a government servant.
The substance of the charge is the completion of nine assessments in an irregular manner, hastily with a view to confer undue favour upon the various assessees.
By such act, the respondent failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of government servant.
Certainly, it cannot be contended that concerning the violation of these rules, no disciplinary action could be taken.
However, what is urged is that in so far as the respondent was exercising quasi judicial functions, he could not be subject to disciplinary action.
The order may be wrong.
In such a case, the remedy will be to take up the matter further in appeal or revision.
The question, therefore, arises whether an authority enjoys immunity from disciplinary proceedings with respect to matters decided by him in exercise of quasi judicial functions? In Govinda Menon vs Union of India, ; , it was contended that no disciplinary proceedings could be taken against appellant for acts or omissions with regard to his work as Commissioner under Madras Hindu Religious and Charitable Endowments Act, 1951.
Since the 304 orders made by him were quasi judicial in character, they should be challenged only as provided for under the Act.
It was further contended that having regard to scope of Rule 4 of All India Services (Discipline and Appeal) Rules, 1955, the act or omission of the Commissioner was such that appellant was not subject to the administrative control of the Government and therefore, the

disciplinary proceedings were void.
Rejecting this contention, it was held as under : "It is not disputed that the appropriate Government has power to take disciplinary proceedings against the appellant and that he could be removed from service by an order of the Central Government, but it was contended that I.A.S. Officers are governed by statutory rules, that ,any act or omission ' referred to in Rule 4(1) relates only to an act or omission of an officer when serving under the Government, and that 'serving under the Government ' means subject to the administrative control of the Government and that disciplinary proceedings should be, therefore, on the basis of the relationship of master and servant.
It was argued that in exercising statutory powers the Commissioner was not subject to the administrative control of the Government and disciplinary proceedings cannot, therefore, be instituted against the appellant in respect of an act or omission committed by him in the course of his employment as Commissioner.
We are unable to accept the proposition contended for by the appellant as correct.
Rule 4(1) does not impose any limitation or qualification as to the nature of the act or omission in respect of which disciplinary proceedings can be instituted.
Rule 4(1) (b) merely says that the appropriate Government competent to institute disciplinary proceedings against a member of the Service would be the Government under whom such member was serving at the time of the commission of such act or omission.
It does not say that the act or omission must have been committed in the discharge of his duty or in the course of his employment as a Government servant.
It is, therefore, open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omissions which cast 305 a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the service.
It is not disputed that the appellant was, at the time of the alleged misconduct, employed as the First Member of the Board of Revenue and he was at the same time performing the duties of Commissioner under the Act in addition to his duties as the First Member of the Board of Revenue.
In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject matter of disciplinary proceedings.
In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship.
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.
" In this context reference may be made to the following observations of Lopes, LJ.
in Pearce vs Foster, [1866] 17 OBD 536, p.542.
"If a servant conducts himself in a way inconsistent with the 306 faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal.
That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business.
It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant." (emphasis supplied) Concerning, the exercise of quasi judicial powers the contention urged was to the following effect : "We next proceed to examine the contention of the appellant that the Commissioner was exercising a quasi judicial function in sanctioning the leases under the Act and his order, therefore, could not be questioned except in accordance with the provisions of the Act.
The proposition put forward was that quasi judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be questioned by the executive Government through disciplinary proceedings.
It was argued that an appeal is provided under S.29(4) of the Act against the order of the Commissioner granting sanction to a lease and that it is open to any party aggrieved to file such an appeal and question the legality or correctness of the order of the Commissioner and that the Government also may in revision under S.99 of the Act examine the correctness or legality of the order.
it was said that so long as these methods were not adopted the Government could not institute disciplinary proceedings and reexamining the legality of the order of the Commissioner granting sanction to the leases.
" That was rejected as under: 'The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of S.29 and the Rules thereunder in sanctioning the leases.
On behalf of the respondents it was argued 307 both by Mr. Sarjoo Prasad and Mr. Bindra that the Commissioner was not discharging quasi judicial functions in sanctioning leases under S.29 of the Act, but we shall proceed on the assumption that the Commissioner was performing quasi judicial functions in granting leases under S.29 of the Act.

Even upon that assumption we are satisfied that the Government was entitled to institute disciplinary proceedings if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty.
It is true if the provisions of S.29 of the Act or the Rules are disregarded the order of the Commissioner is illegal and such an order could be questioned in appeal under S.29 (4) or in revision under S.99 of the Act.
But in the present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duties as Commissioner.
The appellant was proceeded against because in the discharge of his functions, he acted in utter disregard of the provisions of the Act and the Rules.
It is the manner in which he discharged his functions that is brought up in these proceedings.
In other words, the charge and the allegations are to the effect that in exercising his powers as Commissioner the appellant acted in abuse of his power and it was in regard to such misconduct that he is being proceeded against.
It is manifest, therefore, that though the propriety and legality of the sanction to the leases may be questioned in appeal or revision under the Act, the Government is not precluded from taking disciplinary action if there is proof that the Commissioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential for the exercise of the statutory power.
We see no reason why the Government cannot do so for the purpose of showing that the Commissioner acted in utter disregard of the conditions prescribed for the exercise of his power or that he was 308 guilty of misconduct or gross negligence.
We are accordingly of the opinion that the appellant has been unable to make good his argument on this aspect of the case.
" The above case, therefore, is an authority for the proposition that disciplinary proceedings could be initiated against the government 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.
We may also usefully refer to two English decisions.
Thayre vs The London, Brighton and South Coast Railway Company, states: "Dishonesty ' included dishonesty outside the service of the company as well as dishonesty towards the company." In Thompson vs British Berna Motor Lorries Limited 33 T.L.R. 187 at page 188, it has been held as under : "It was the duty of the servant to render proper, full and clear accounts to his principals, and it was the duty of a servant to render prompt obedience to the lawful orders of his master.

in this case the plaintiff had failed in both respects.
There was no question as to the plaintiff 's honesty, but he had been negligent.
" The Tribunal has chosen to rely on Civil Appeal Nos.
4986 87/90.
The order in that case clearly shows the ultimate conclusion was that the charge framed against the delinquent officer had not been established.
In support of that conclusion, it was observed as under 309 "We are also of the view that the action taken by the appellant was quasi judicial and should not have formed the basis of disciplinary action.
" We do not think where to buttress the ultimate conclusion, this observation was made, that could ever be construed as laying the law that in no case disciplinary action could be taken if it pertains to exercise of quasi judicial powers.
Then, we come to Civil Appeal No. 560/91 to which one of us (Mohan, J.) was a party.
The ruling in this case turned on the peculiar facts.
Nevertheless, what we have to carefully notice is the observation as under : "On a reading of the charges and the allegations in detail learned Additional Solicitor General has fairly stated that they do not disclose any culpability nor is there any allegation of taking any bribe or to trying to favour any party in making the orders granting relief in respect of which misconduct is alleged against the respondent.
" The above extract will clearly indicate that if there was any culpability or any allegation of taking bribe or trying to favour any party in exercise of quasi judicial functions, then disciplinary action could be taken.
We find our conclusion is supported by a following observations found in the said order at page 3: "In our view, the allegations are merely to the effect that the refunds were granted to unauthorized instructions of the Central Board of Direct Taxes.
There is no allegation, however, either express or implied that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous considerations.
In these circumstances, merely because such orders of refunds were made, even assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent was discharging quasi judicial function.
If any erroneous order had been passed by him correct remedy is by way of an appeal or revision to have such orders set aside.
" 310 In the case on hand, article of charge clearly mentions that the nine assessments covered by the article of charge were completed (i) in an irregular manner, (ii) in undue haste, and (iii) apparently with a view to confer undue favour upon the assessees concerned.
(Emphasis supplied) Therefore, the allegation of conferring undue favour is very much there unlike Civil Appeal No. 560/91.
If that be so, certainly disciplinary action is warranted.
This Court had occasion to examine the position.
In Union of India & Ors.

vs A.N. Saxena; , to which one of us (Mohan, J.) was a party, it was held as under : "It was urged before us by learned counsel for the respondent that as the respondents was performing judicial or quasi judicial functions in making the assessment orders in question even if his actions were wrong they could be corrected in an appeal or in revision and no disciplinary proceedings could be taken regarding such actions.
In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi judicial proceedings is not correct.
It is true that when an officer is performing judicial or quasi judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant.
The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence.
Hence, the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi judicial functions in respect of his actions in the discharge or purported to discharge his functions.
But it is not as if such action cannot be taken at all.
Where the 311 actions of such an officer indicate culpability, namely a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken.
" 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.
" 312 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.
V.P.R. Appeals allowed.