CENTRAL ADMINITRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3971/2015
With
CP 693/2015
OA 1286/2014
OA 2976/2014
MA 4340/2015
MA 1280/2015
OA 2977/2014
MA 4341/2015
MA 1281/2015

New Delhi this the 2nd day of February, 2016

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Mr. V.N.Gaur, Member (A)

OA 3971/2015

Shri Ashok Kumar Aggarwal,
Aged about 52 years,
S/o Shri R.B.Aggarwal,
R/o 56, Ashoka Road,
New Delhi-110001 ... Applicant

(By Advocate Shri S.K.Gupta)

VERSUS

Union of India through

1. Secretary,
   Department of Revenue,
   Ministry of Finance,
   North Block, New Delhi.

2. Chairman,
   Central Board of Direct Taxes,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi.

3. Pr.Chief Commissioner of Income Tax (CCA),
   C.R.Building,
   I.P.Estate, New Delhi.

4. Pr.Director General of Income Tax (Vig),
   Ist Floor, Dayal Singh Library,
   1, DDU Marg, New Delhi. ... Respondents

(By Advocate Shri Rajesh Katyal)

CP 693/2015
OA 1286/2014

Shri Ashok Kumar Aggarwal,
Aged about 52 years,
S/o Shri R.B.Aggarwal,
R/o 56, Ashoka Road,
New Delhi-110001 ... Petitioner

(By Advocate Shri S.K.Gupta)

VERSUS

1. Shri Hashmukh Adia,
Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2. Smt. Anita Kapoor,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi. ... Respondents

(By Advocate Shri Rajesh Katyal)

OA 2976/2014

Shri Ashok Kumar Aggarwal,
Aged about 51 years,
S/o Shri R.B.Aggarwal,
R/o 56, Ashoka Road,
New Delhi-110001
(Working as Joint Commissioner of Income Tax,
Delhi). ... Applicant

(By Advocate Shri S.K.Gupta)

VERSUS

1. Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi.

3. Director General of Income Tax (Vigilance),
Deen Dayal Library Building,
Deen Dayal Upadhaya Marg,
New Delhi. ... Respondents

(By Advocate Shri Rajesh Katyal)

OA 2977/2014

Shri Ashok Kumar Aggarwal,
Aged about 51 years,
S/o Shri R.B.Aggarwal,
R/o 56, Ashoka Road,
New Delhi-110001
(Group 'A' Service) ... Applicant

(By Advocate Shri S.K.Gupta)

VERSUS

1. Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi.

3. Director General of Income Tax (Vigilance),
Deen Dayal Library Building,
Deen Dayal Upadhaya Marg,
New Delhi.

4. Shri Neeraj Kumar
Retired IPS
(former Joint Director of CBI)
D-119, Satya Marg,
Chankyapuri, New Delhi-21 ... Respondents

(By Advocate Shri Rajesh Katyal)

O R D E R

Hon'ble Mr. A.K.Bhardwaj, Member (J):

The applicant joined the services of Union of India as Income Tax Officer (ITO) Group 'A' in December, 1985. The post of ITO was subsequently redesignated as Assistant Commissioner of Income Tax.

In due course, he was promoted as Joint Commissioner of Income Tax in terms of Office Order no.F.NoC.30011/1/99-Ad.1 dated 28.12.1999. On 6.01.1998, the office of M/s Intech Technology (Far East) India Limited was searched by a team of Enforcement Directorate (ED) officers comprising Shri K.S. Thapar, CEO, Smt. Mohini Makhijani, EO, S/Sh.Balwinder Singh, EO, J.P.Kujur, EO, Ajay Singh, AEO and Shri G.K.Dutta, E.O. The search was authorized by Shri R. Ravindra Nath, Assistant Director, while the file was also approved by the applicant, herein (Ashok Kumar Aggarwal). At the said point of time, the applicant was posted as Deputy Director (Enforcement). The enquiry in the case was initiated on the basis of a note prepared by Mr. B.C.Shah, Enforcement Officer regarding information against M/s Intech Group Industrial Technology (Far East) Ltd., M-8, M Block Market, Greater Kailash-II, New Delhi and its parent companies relating to their involvement in siphoning of money to the tax haven in the British Virgin Islands. The enquiry and search led to a complaint made by Shri Pavanjit Singh to Central Bureau of Investigation (CBI) in which CBI prepared its report dated 23.05.2002 and suggested action against the applicant herein. The report was analyzed by Addl.DIT (Vigilance) Headquarter and it was concluded that no case could be made out for departmental action against the applicant herein. Ergo a proposal was sent for the approval of the Chairman, CBDT for referring the matter to CVC for its first advice with the recommendation that the case against the applicant be closed. Nevertheless on 1.12.2006 the applicant was charge sheeted

for committing the misconduct of harassing by launching an inquiry against Shri Pavanjit Singh in a manner that his undue harassment was designed as the information against him was emanated from the applicant herein and he failed to check and stop the search party from forcibly bringing Shri Pavanjit Singh to Enforcement directorate office on completion of search. The charge sheet was challenged before this Tribunal in OA No. 456/2009. The OA was decided along with a batch of OAs, viz OA 2680/2008, OA 457/2009, OA 991/2009, OA 2028/2009, OA 2054/2009, OA 2728/2008, OA 2582/2009, OA 2588/2009, OA 3476/2009 and OA 3477/2009 in terms of order dated 24.02.2010. The view taken by the Tribunal in the order was that the charge sheet being issued without the approval of the competent authority was bad in law. Para 2 to 7 of the order read thus:-

> "2.Mr. Gupta submits that in a later decision in B.V. Gopinath Vs. Union of India (OA 800/2008), decided by a co-ordinate Bench of the Tribunal, on 05.02.2009, the same view had been taken. There also, the penalty memorandum issued under Rule 14 of the CCS (CCA) Rules had been set aside, the Bench holding that the charge sheet had been issued without approval of the competent authority and in the matter of appointment of the Inquiry Officer also, there was irregularity since the exercise had been carried out even before the written statement of defence had been received. It has been held that the short circuiting as had been done, overlooking the provisions of rules amounted to infraction of the substantive procedure and this caused prejudice to the concerned person and, therefore, the follow up proceedings were not sustainable in law. The merit of the matter had not been gone into. The charge sheet had been set aside with liberty to the respondents to take further action as envisaged by the rules. The decision as above had been subjected to challenge in WP (C) No. 10452/2009. The decision as rendered by the Tribunal had been upheld. It had been noticed that although the competent authority, namely, the Minister had granted

approval for initiating the major proceedings, there was nothing to indicate that the files had been put up before the disciplinary authority (Minister), and it was clear that approval of the disciplinary authority for issuing the charge memo had never been taken. In the circumstances, it had been held that there was no reason to interfere with the order.

3. We also find that the decision in OA 1434/2008 had been upheld by the High Court in a separate proceeding (WP (C) No. 13223/2009, following the decision in WP (C) No. 10452/2009. Counsel for the applicants submits that the respondents had proposed to take the matter by way of a Special Leave Petition to the Supreme Court, but on the advice of the Additional Solicitor General dated 29.09.2009, such steps were not decided to be pursued.

4. Learned counsel for the applicants submits that the issue is one and the same as regards the essential facts, namely, that the competent authority had not framed the charge sheet, although there was approval given for initiating the disciplinary action. The issue had been specifically addressed to by the High Court and it had been held that this did not conform to the procedure which was mandatory that the charge memos issued to the officers were to be approved by the disciplinary authority. Mr. Gupta submits that in the aforesaid circumstances, a different yardstick cannot be employed as the law on the subject has been fully clarified by the Division Bench which is required to be followed by the Tribunal in letter and spirit.

5. Of course, we notice that Mr. R.N. Singh had attempted to draw a distinction, pointing out that the view as above taken, could not have been possible to be supported as the Tribunal as well as the High Court had overlooked certain precedents which would have really governed the situation. By way of a compilation of judgments, Mr. Singh had attempted to indicate that the approval for disciplinary proceedings was sufficient enough for the proceedings to be initiated and presence of the competent authority, namely, Minister was required only at the stage of imposition of penalty. The decisions were as follows:

(1) Ishwar Lal Girdhar Lal Joshi etc. Vs. State of Gujarat & Anr. (AIR 1968 870);
(2) Jainath Wanchoo Vs. Union of India & Ors. (AIR 1970 Bombay 180);
(3) A.K. Banerjee Vs. Deputy Secretary to Govt. of India and Ors. (1971 ITR Volume-79 (Cal) 707);

(4) State of M.P. Vs. Dr. Yashwant Trimbak (AIR 1996 765);
(5) Chandra Kumar Chakravarty Vs. Union of India & Ors. (1996 (2) SLJ 209);
(6) Transport Commissioner, Madras Vs. A.Radha Krishna Moorthy (JT 1994 (7) SCC 744);
(7) Union of India & Anr. Vs. Kunisetty Satyanarayana (2007 (1) SCT 452);
(8) Govt. of Andhra Pradesh Vs. V. Appala Swamy (2007 (3) SCALE 1);
(9) MCD & Anr. Vs. R.V. Bansal (130 (2006)DLT 235(DB);
(10) Subir Kumar Mitra Vs. Govt. of India & Ors. (OA 767/2005 Ernakulam Bench), decided on 01.09.2006 (upheld by the High Court).

Although a spirited attempt has been made by Mr. R.N. Singh, we do not think at least as of now, it may be justifiable for us to strike a different note. It had been noticed from the files that the position canvassed by Mr. S.K. Gupta, factually is correct. When the Rule prescribes that the charge sheet has to be drawn up or caused to be drawn up by the Disciplinary Authority, the expression is unambiguous.

6. We also see that the issue that had been decided specifically by the High Court had not come up as such before the Tribunal, High Court or the Supreme Court in the cited cases.

7. We, therefore, allow these applications. The charge sheets issued will stand quashed. But we make it clear that as has been reserved in the cases cited earlier, there will be full liberty to the respondents to proceed with the matter de novo, and the passage of time will not also preclude them from treating the issue as might be in their discretion, of course, subject to rules which have particular relevance. We make no order as to costs."

Though the order passed by the Tribunal was still under challenge before the superior Court, the respondents issued the charge sheet under challenge in OA no. 2977/2014.

2. The DIG, Police, CBI, ACP New Delhi also sent letter dated 29.01.2001 forwarding the report in PE-DA-1-1999-A-0003 against the applicant. In the said case, the CBI had made enquiry against him in respect of 5 allegations viz;-

(i) A decision was taken to keep the activities of Shri Chandraswamy and his associates under close watch in view of repeated violations of FERA by him. Shri Ashok Aggarwal was instructed by the headquarters to take further necessary action in this regard. Shri Aggarwal handled this sensitive matter in a most casual/negligent manner resulting in leaking of information because of which the entire operation had to be aborted.

(ii) Shri Ashok Aggarwal did not take appropriate steps to oppose the applications of Shri Chandraswamy to go abroad for alleged medical treatment and in fact, was instrumental in giving no objection of the Directorate of Enforcement to the Court for the grant of requisite permission to Shri Chandraswamy, knowing fully well the sensitive nature of the various cases in which Shri Chandraswamy was involved.

(iii) Despite specific instructions of Director of Enforcement to be more cautious about politically sensitive cases during the pre election period to avoid allegations of acting for political reasons, Shri Ashok Aggarwal without completing the ground work relating to collection of information concerning FERA violation of Jain T.V. issued summons to Dr. J.K.Jain, interrogated him and gave vide publicity in the press for extraneous consideration.

(iv) Shri Ashok Aggarwal showed lack of restraint and used his powers arbitrarily by summoning Shri Amit Burman u/s 40 of the FERA for extraneous consideration, without making any inquiries and without issuing a directive u/s 33(2) of the FERA.

(v) Certain FERA violation committed by Shri Basudev Garg in connection with the cancer treatment of his son abroad were hushed up by Shri Ashok Aggarwal after accepting illegal gratification of Rs.50,00,000/- and all the incriminating documents seized during the course of search of Shri Garg's premises were returned to him."

3. In the wake of report of the CBI, approval of Hon'ble Finance Minister was solicited for initiation of disciplinary proceedings for

major penalty against the applicant and appointment of Enquiry Officer as well as Presenting Officer in case an oral enquiry was considered necessary. Hon'ble Finance Minister had given approval for initiation of disciplinary proceedings on 16.08.2001. As a result a charge sheet dated 13.09.2001 containing five articles of charge was issued to the applicant. The applicant filed a written statement denying the charges.

4. The Enquiry officer submitted his report dated 21.10.2002, wherein article 1 and 2 were found proved, article 3 was found partly proved, article 4 was not proved and article 5 was found partly proved. Thereafter with the approval of Chairman CBDT, the case was referred to CVC for its second stage advice. The CVC advised him imposition of suitable major penalty on the applicant. Thereafter the CVC's OM dated 08.12.2003 was sent to applicant seeking his comments/representation. He submitted his comments vide representation dated 14.01.2004. When the matter was placed before Hon'ble Finance Minister for his approval, for making a reference to UPSC for its statutory advice, it was directed that article 1 and 2 of the charge could be held to be proved partly. Reference to UPSC for its statutory advice was submitted on 10.12.2007 which advised imposition of penalty of downgrading the CO to the lower stage in his time scale of pay for a period of three years with further direction that he would not earn increment of pay during the period and on expiry of the period and the reduction would have the effect of postponing his future increment. The matter was again placed before Hon'ble Finance Minister for acceptance of advice of UPSC and imposition of

penalty as advised by the Commission. The Finance Minister accorded his approval on 18.12.2008, However before the penalty order could be issued the applicant approached this Tribunal by way of OA No. 2680/2008 seeking quashing of charge sheet on the ground that the same had not been approved by the Finance Minister. The OA was decided in terms of order dated 24.02.2010 (ibid) alongwith OAs number 456/2009, OA 457/2009, OA 991/2009, OA 2028/2009, OA 2054/2009, OA 2728/2008, OA 2582/2009, OA 2588/2009, OA 3476/2009 and OA 3477/2009. The relevant excerpt of the order has already been reproduced hereinabove.

5. Since a liberty had been accorded to respondents to proceed with the matter de novo, the applicant was served with the charge sheet challenged in OA no. 2976/2014. The Delhi Zonal Office of Enforcement Directorate had conducted a search of three shops at Hotel Maurya Sheraton, New Delhi and a residential premise i.e. G-51, Lajpat Nagar III, New Delhi of one Subhash Chandra Barjatya on 1.1.1998. The applicant before us was the Deputy Director incharge of Delhi Zone at the relevant time. During such search, the officers of the ED seized a fax message (debit advice) from one of the shops of Shri Barjatya purportedly sent from Swiss Bank Corporation, Zurich, Switzerland. The fax message reflected a debit of US dollar 1,50,000/- from the account of Royalle foundation, Zurich, Switzerland in favour of one S.K.Kapoor holder of account no.022-9-608080, Hong Kong & Shanghai Banking Corporation (HSBC), as per the advice of customer i.e. Royalle foundation. Shri S.C. Barjatya filed a complaint dated 4.1.1998 with Director Enforcement alleging that the fax massage

from Swiss Bank Corporation was a forged document and had been planted in his premises during the course of search undertaken on 1.01.1998 in order to frame him. In the wake, a prima facie view was taken that a criminal conspiracy had been hatched by the officers of the Delhi Zonal Office to create a forged document and to use it as a genuine document to create false evidence and to implicate Mr. S.C.Barjatya and Case RC No.S18/E0001/1999 dated 29.01.1999 was registered.

6. In the said case, Shri Abhishek Verma one of the accused filed an application under Section 306 Cr.P.C seeking pardon and becoming approver on 18.07.2000. The applicant herein also moved an application for rejection of the application of Mr. Abhishek Verma. His application was rejected by learned Special Judge on 3.05.2001. Challenge by the applicant to said order before Hon'ble High Court and Hon'ble Supreme Court remained unsuccessful on 10.07.2001 and 8.10.2001. The Investigating Agency (CBI) had no objection to the application of Mr.Abhishek Verma. On 7.09.2001, the learned Special Judge allowed the application of Mr. Abhishek Verma seeking pardon and made him an approver. The order was challenged by the applicant herein before Hon'ble Delhi High Court by filing petition under Section 482 Cr. P.C. i.e. Crl. Misc. (Main) No. 3741/2001. During the pendency of the petition, investigation report (challan/charge sheet) was filed on 28.06.2002 of which the learned Special Judge took cognizance vide order dated 8.07.2002. On 17.12.2005 charges were framed. In terms of order dated 20.08.2007, Hon'ble High Court quashed the order dated 7.09.2001 passed by the

learned Special Judge granting pardon to Mr. Abhishek Verma. Matter was remitted back to the learned Special Judge to decide the application afresh. The Investigating Agency filed Criminal Appeal No.1837/2013 against the order of Hon'ble High Court.

7. The criminal appeal was dismissed in terms of order dated 22.11.2013. The CBI had also initiated a preliminary enquiry against the applicant for accumulating the assets disproportionate to the known source of income to the tune of Rs.8,38,456/- on 17.09.1999 and on conclusion of the same registered a regular criminal case vide FIR no.S19/E0006/99 dated 7.12.1999. The CBI sent a letter dated 24.05.2002 to the Ministry of Finance for sanction of prosecution against him. The sanction for prosecution was accorded vide order dated 2/26/11/2002. The CBI filed investigation report/charge sheet (challan) in the Court of Special Judge on 5.12.2002 of which the Court took the cognizance and issued summon to applicant herein on 10.01.2003. He questioned the validity of sanction by filing applications dated 1.05.2003 and 12.09.2005. The Special Judge dismissed the applications vide order dated 28.07.2007. The order was questioned by the applicant by filing Revision Petition under Sections 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973. Hon'ble High Court set aside the said order and remanded the matter back to the Special Judge. The order of Hon'ble High Court was questioned by the CBI before Hon'ble Supreme Court by filing Criminal Appeal no 1838/2013 which was dismissed in terms of order dated 22.11.2013.

8. In view of the pendency of aforementioned criminal cases against him, the applicant was placed under suspension in terms of order dated 28.12.1999. The order was challenged before this Tribunal in OA no. 783/2000 which was allowed in terms of order dated 17.01.2003 giving the opportunity to respondents, herein to pass a fresh order as appropriate, based on facts of the case. The respondents reconsidered the case and passed order dated 25.04.2003 taking a view that the applicant should remain under suspension. The order was challenged by the applicant again by filing OA no. 1105/2003 which was dismissed on 9.05.2003. The order of the Tribunal passed by it dismissing the OA was challenged before Hon'ble High Court. The challenge was subsequently withdrawn on 11.08.2010. The order of suspension was reviewed from time to time and was extended, thus the applicant again filed OA 2842/2010 before this Tribunal for quashing the suspension order. The OA was disposed of in terms of order dated 16.12.2011 with direction to respondents herein to convene a meeting of special review Committee within stipulated period to consider revocation or continuation of suspension after taking into consideration various facts mentioned in the order. In implementation of the said order, a SRC (Special Review Committee) was constituted and in acceptance of the recommendation of SRC, the competent authority passed order dated 12.01.2012 to the effect that the suspension of applicant would continue. Since the views of the CBI were made available after 12.01.2012, the SRC again met and recommended for continuance of suspension of the applicant. In acceptance of the recommendation,

competent authority passed order dated 3.02.2012. The orders dated 12.01.2012 and 3.02.2012 (ibid) were challenged by the applicant by filing OA no. 495/2012 before this Tribunal which was allowed on 1.06.2012. The order was challenged before Hon'ble Delhi High Court in Writ Petition no. 5247/2012, which was dismissed on 17.09.2012. The order was challenged before Hon'ble Supreme Court in Civil Appeal no.9454/2013 which was dismissed in terms of order dated 22.11.2013. Since even after the order of the Tribunal passed by it quashing the continuance of suspension order, the respondents had directed to continue the suspension of applicant for a period of six months subject to review and outcome of the challenge to the order of the Tribunal before High Court, in para 24 of the judgment, the Hon'ble Supreme Court had recorded it's astonishment. Para 24, 31 and 34 of the judgment read thus:-

> "24. It is astonishing that in spite of quashing of the suspension order and direction issued by the Tribunal to re-instate the respondent, his suspension was directed to be continued, though for a period of six months, subject to review and further subject to the outcome of the challenge of the Tribunal's order before the High Court. The High Court affirmed the judgment and order of the Tribunal dismissing the case of the appellants vide impugned judgment and order dated 17.9.2012. Even then the authorities did not consider it proper to revoke the suspension order.
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> xxx xxx
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> 31. In view of above, we are of the considered opinion that it was not permissible for the appellants to consider the renewal of the suspension order or to pass a fresh order without challenging the order of the Tribunal dated 1.6.2012 and such an attitude tantamounts to contempt of court and arbitrariness as it is not permissible for the executive to scrutinize the order of the court.
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> xxx xxx

34. The aforesaid facts make it crystal clear that it is a clear cut case of legal malice. The aspect of the legal malice was considered by this Court in Kalabharati Advertising v Hemant Vimalnath Narichania & Ors,' AIR 2010 SC 3745, observing:

> "25. The State is under obligation to act fairly without ill will or malice— in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.
>
> 26. Passing an order for an unauthorised purpose constitutes malice in law."

9. After the judgment of Hon'ble Supreme Court, respondents passed order dated 06.01.2014 revoking the suspension of the applicant and thereafter they issued order dated 20.01.2014 directing transfer of applicant. The order of transfer was challenged before this Tribunal in OA no 178/2014 which was allowed in terms of order dated 22.07.2014.

10. During the course of hearing, learned counsel for the applicant pointed out that even after the order of Hon'ble Supreme Court dismissing the challenge to the order of Hon'ble High Court passed by it upholding the order of the Tribunal passed by it allowing the OA of the applicant against the suspension order, the respondents could assign duty to applicant only in December, 2015 and have not yet paid

salary to him and a long period of life and service i.e.,17 years of an officer who joined IRS after qualifying Civil Service Examination is turned in deep pain and agony.

11. The validity of sanction for prosecution granted on 21.06.2002 in case RC No.S18/E0001/1999 dated 29.01.1999 was challenged by the applicant in Writ Petition (Criminal) no.1401/2002 and the same in case RC No.S19/E0006/1999 dated 07.12.1999 was challenged by him in Criminal Revision appeal no. 338/2014.

12. In the meantime, applicant filed OA no. 1286/2014 for issuance of direction to respondents to give him promotion. He also filed Criminal CP 01/2015 against the respondents for not bringing forth in the OA such material documents, including those which may establish his innocence in the aforementioned criminal cases. The OA was disposed of with direction to respondents to finalize the examination regarding consideration of the applicant for ad hoc promotion and the criminal CP was also disposed of. No notice was issued in the criminal Contempt Petition.

13. When OA No.2976/2014, wherein memorandum dated 20.03.2014 and communication dated 28.04.2014 are under challenge, came up for admission, this Tribunal passed the following interim order dated 27.8.2014:-

> "The applicant has filed this OA seeking the following main relief as well as interim relief:-
>
> **Main Relief**
>
> (i). To quash and set aside the enquiry proceedings as initiated through Memorandum dated 20.03.2014 and also the communication dated 28.4.2014 being in violation of the orders dated 24.02.2010 passed by this Hon'ble Tribunal & in

violations of various provisions of CCS (CCA) Rules with all consequential benefits/relief;

(ii) To pass any other order(s) as deem fit and proper in the facts and circumstances of the present case."

Interim relief

Pending final disposal of the OA, the operation of the impugned charge sheet dated 20.03.2014 (Annexure A-1) may kindly be stayed and the Respondents be directed not to proceed further in pursuance to the said charge sheet dated 20.03.2014"

2. The contention of the counsel for the applicant is that even though the cha declared no- nest by this Tribunal for the reasons that it has not been proved by the disciplinary authority, the respondents have again issued the Memorandum dated 20.03.2014 to proceed with the inquiry from the stage it has reached earlier. According to the learned counsel for the applicant, last stage of the proceedings in the earlier proceedings was tat the inquiry officer submitted his report, disciplinary authority has disagreed with the same and the applicant has filed his representation against the same. The next stage is to issue the penalty order. He has also submitted that consultation with the UPSC has also over in the matter.

3. In our considered view, let notice be issued to the respondents, returnable on 10.09.2014.

4. As an interim relief, we direct the respondents that no final order shall be passed in this case without the leave of this Court."

14. The OA No. 2977/2014, in which memorandum dated 14.03.2014 and communication dated 07.04.2014 are under challenge, also came up for admission on 27.08.2014 and in the said OA also this Tribunal passed more or less same order as passed in OA 2976/2014. Para 5 of the interim order reads thus:-

> "As an interim relief, we also direct that the respondents shall not pass any final order without the leave of this Court."

15. When the orders of appointment of Presenting Officer dated 29.09.2015 and 30.09.2015 respectively were passed in the two disciplinary cases wherein the charge sheet are under challenge, i.e., OA no. 2976/2014 and OA 2977/2014, the applicant filed MA 4340/2015 in OA 2976/2014 and MA 4341/2015 in OA 2977/2014 for stay of the inquiry proceeding. When the MAs came up for consideration, a view was taken that all the OAs of the applicant should be disposed of together and the OA no.2976/2014 and 2977/2014 were directed to be listed for disposal along with OA No. 3971/2015.

16. The common grounds raised by the applicants in OA no. 2976/2014 and OA 2977/2014 to challenge the memorandum of charges dated 20.03.2014 and dated 14.03.2014 are:-

(i). The charge sheets are vitiated being issued with malafide.

(ii). Once this Tribunal had quashed the previous proceedings on the ground that the charge sheet had not been approved by the competent authority and had given liberty to respondents to start the proceedings de-novo, the proceedings could not have been resumed from the stages they are reached at the time of quashing the charge sheet by the Tribunal.

(iii) The decision taken by the disciplinary authority to start the disciplinary proceeding from the stage where it stood at the time of quashing the charge sheet by the Tribunal is contemptuous.

(iv) The impugned charge sheets are counter blast of the order passed by Hon'ble Supreme Court on 28.02.2014 revoking the suspension of the applicant w.e.f. 12.1.2012 and are also an attempt to curb the claim of the applicant for further promotion.

(v). The allegations in the charge sheets pertained to the year 1996 to 1998, thus the same are liable to be quashed on the ground of there being delay in initiation and conclusion of the disciplinary proceedings.

(vi). The defective charge sheet challenged in OA 2977/2014 was issued on 1.12.2006 i.e after nine years of the incident to which the charges pertained and the impugned charge sheet could be issued after 16 years. Similarly the defective charge sheet challenged in OA 2976/2014 was issued on 13.09.2001 i.e after three years of the incident and impugned charge sheet was issued after 18-20 years.

(vii). When the CBI recommended initiation of departmental proceedings against the applicant, it never sent the relied upon documents to the disciplinary authority and in the absence of such documents being sent to disciplinary authority and application of mind by it, the proceedings were vitiated being violative of CBI (Crime) Manual, 1991.

(viii). As has been ruled by this Tribunal in Govind Manish, at the time of taking a decision to initiate the departmental action, the disciplinary authority must have with it all the relied upon documents in support of the charges so framed with it.

(ix) When the approval for appointment of Inquiry Officer and Presenting Officer was also obtained from the disciplinary authority along with the approval for initiation of disciplinary proceeding, the scope of consideration of written statement of defence (WSD) by the disciplinary authority was shunned and from the said facts it is established that the proceedings were initiated with pre determined notion to harass the applicant.

(x). In terms of Manual of Office Procedure Volume-1 (Administrative), before issuance of charge sheet, the respondents ought to have issued show cause notice to the applicant so that he could convince the disciplinary authority that no case for initiation of disciplinary proceedings against him had been made out.

Additionally in OA no. 2977/2014, the applicant espoused that:-

(i). The initiation of disciplinary proceedings against the applicant is fall out of malafide act on the part of respondent no. 4 in the OA, a close friend of FERA accused Mr. Pawanjit Singh. According to applicant, Mr. Pawanjit Singh was investigated against by the Enforcement Directorate under his supervision for his hawala activity including maintenance of illegal foreign bank account in Hongkong & Shanghai Banking Corporation, Channel Islands, Jersey, a well known international tax haven

and since he could not help him despite being requested by respondent no.4, he out of personal grudge implicated him in false CBIs cases (ibid). In CBI custody, he was made naked, abused, humiliated, insulted and physically tortured by respondent No. 4 and in the presence of Pawanjit Singh. Respondent No.4 also told him that he had got his reputation spoiled through media and it could be better if he commits suicide once granted bail.

(ii). The officers of CBI had procured a complaint from FERA accused Pawanjit Singh in 2000 regarding the alleged incident of January 1998 i.e. after two years, from which fact it is clear that it was not so that the intention of the investigating agency/respondent was to first find out the wrong done and then nab the wrong doers, but was to design the allegation with the object of harassment of applicant.

(iii). He is made to pay the cost of supervising the investigation of a case in accordance with law against an influential FERA accused.

(iv). The allegations contained in memo of charges are not so grave that the enquiry cannot be found vitiated on the ground of being initiated after long delay.

(v). The officers of the Directorate of Vigilance, CBDT found that the CBI report failed to establish any case of harassment or irregularity against the applicant and no malafide could be

attributed to him. The ground K mentioned in the said OA reads thus:-

> "Because after examining and considering CBI's report, the officers of Directorate of Vigilance, CBDT found that the said CBI's report failed to establish any case of harassment or irregularities against the applicant and no malafide can be attributed to the applicant. It was further found that there was no evidence in the CBI's report to show that the applicant was involved in the alleged harassment of the said FERA accused Pawanjit Singh and therefore, in view of the above findings, Directorate of Vigilance, CBDT recommended that the case against the applicant may be closed. However, subsequently, the ED furnished its comments recommending the initiation of departmental enquiry under influence of Neeraj Kumar."

17. The grounds raised in OA 2976/2014, different from those raised in OA 2977/2014, are:-

(i). The CVC was not consulted at all either before issuance of the charge sheet already quashed by this Tribunal or the impugned charge sheet, thus the impugned charge sheet is vitiated on this ground alone. Even when the opinion of CVC was obtained after issuance of charge sheet already quashed by this Tribunal, the same was not made available to applicant and, therefore, the applicant is entitled to succeed in the OA also on the ground that even the advice of CVC obtained after issuance of charge sheet was not made available to him. The plea of the applicant that non supply of advice of CVC would vitiate the order of disciplinary authority is supported by the law declared by Hon'ble Supreme Court in the case of **D.C.Agarwal and Anr**. Vs. **State Bank of India and Ors** (AIR 1993 SC 1197).

(ii). The departmental proceeding was initiated against the applicant with a pre determined notion. Initially in the month of May, 2001, after considering and examining the CBI report, the officers upto the level of Chairman, CBDT approved the proposal for dropping the departmental action and it was only after the Revenue Secretary called a meeting of the officers of the CBDT on 7.08.2001 and directed them to put up a proposal recommending initiation of departmental action and appointment of inquiry officer and presenting officer that the DG (Vigilance) had put up the proposal on 09.08.2001 for initiation of the proceedings as well as appointment of IO and PO and the proposal was approved by the Hon'ble Finance Minister in the capacity of disciplinary authority without application of mind on 16.08.2001. In the process, mandatory provision of obtaining Ist stage advice was completely ignored.

(iii). Initially the matter was processed for dropping all the charges after consultation with CVC and thereupon the Secretary (Revenue) did not agree with the proposal and desired to discuss the issue in a meeting.

(iv). The action to initiate the disciplinary proceedings need to be based on some material documents and cannot be a result of some discussion in a meeting.

18. The stand taken by the respondents in both the OA no. 2976/2014 and OA 2977/2014 is that:-

(i) Mere issuance of charge sheet to him has not given any cause of action to the applicant to file these Original Application and the OA is liable to be dismissed on this ground alone.

(ii) Interference with the charge sheet is permissible only in very rare and exceptional cases where it is found to be wholly without jurisdiction or illegal.

(iii) While quashing the charge sheet dated 1.12.2006 and 13.09.2001 in OA nos 456/2009 and 2680/2008, this Tribunal had given liberty to proceed with the matter de-novo, as it viewed that the passage of time will also not preclude them from treating the issue as might be in their discretion, of course, subject to rules which have particular relevance.

(iv) The service of charge sheet upon a Government servant is only a follow up action of the decision taken by the disciplinary authority, thus there is no merit in the plea of applicant that the disciplinary proceedings ought to have been initiated de-novo and could not have been resumed from the stage at which the same was interfered by the Tribunal in the aforementioned Original Applications.

(v) In any case the charge sheet challenge in OA no. 2977/2014 is at the initial stage and in respect of the charge sheet under challenge in OA no. 2976/2014, the respondents have not acted upon the approval to start the enquiry from the stage the earlier charge sheet dated

13.09.2001 was quashed by this Tribunal. Mere taking of the approval to start the disciplinary enquiry from a particular stage of the earlier enquiry has not vitiated the disciplinary proceedings, as the applicant is not prejudiced thereby.

(vi) The view of an officer could not have become the view of the department as it is the disciplinary authority which has the final say in the matter.

(vii) The proceedings were initiated against the applicant with the approval of disciplinary authority.

Additonally in OA 2977/2014 they have espoused that vide Office letter dated 24.10.2005, the CBI was requested to provide the copies of listed documents and vide letter dated 14.11.2005, the Investigating Agency had provided the copies of listed documents and accordingly a note was submitted to disciplinary authority along with the relevant documents for soliciting its approval for initiating the major penalty proceedings.

19. Mr. Rajesh Katyal, learned counsel for respondents reiterated the aforementioned pleas raised in the counter reply filed in the two OAs and further submitted that it is not open to this Tribunal to go into the correctness of the charges. To buttress his plea that the applicant has raised factual controversies in the present OA, he read out para 5 (a) of the OA 2977/2014 which read thus:-

> "Because the charge sheet dated 14.03.2014 is a result of malicious and malafide acts on the part of Mr. Neeraj Kumar, respondent No. 4 herein who out of personal grudge obtained a false and frivolous complaint in January, 2000 from his close friend and a FERA accused namely Mr. Pawanjit Singh for alleged harassment done to him by ED officers on the night of 06.01.1998 i.e. 2

> years after the alleged incident. Mr. Pawanjit Singh was being investigated by Enforcement Directorate under supervision of the applicant for his hawala activities including his maintaining illegally foreign bank account in Hongkon & Shanghai Banking Corporation, Channel Islands, Jersey, a well-known international tax heaven. Since the applicant could not help Mr. Pawanjit Singh despite being requested by the said Neeraj Kumr, he, out of personal grudge, implicated the applicant in false CBI case including the present case of alleged harassment. The applicant under CBI custody was made naked, abused, humiliated, insulted and physically tortured by Mr. Neeraj Kumar in the presence of Pawanjit Singh. The applicant was told repeatedly by Neeraj Kumar that he has got his reputation spoiled through media and it would be better if he could suicide once granted bail (these facts are briefly narrated in the Crl. W.P. No.938/2001 filed by the applicant in Hon'ble High Court on 31.08.2001 and thereafter in a detailed representation dated 08.09.2011 addressed to Director of CBI and other authorities). The facts stated in the representation speak volumes of highhandedness on the part of said Neeraj Kumar and his close proximity and friendship with the said FERA accused Pawanjit Singh and his conscious efforts of helping out Pawanjit Singh in ED case and to book the applicant by hook and crook. The investigation into the complaint of Pawanjit Singh was done by Neeraj Kumar in most malafide manner and in gross misuse of his official position. Any act done out of malafide has no sanctity in the eye of law. Hon'ble Delhi High Court in two separate orders have ordered for registration of 2 FIRs against the said Neeraj Kumar for fabrication of documents and for harassing and wrongfully confining the younger brother of the applicant in CBI office in violation of order passed by Learned Special Judge. Though by filing letter Patent Appeals which are not maintainable in criminal cases, said Neeraj Kumar obtained ex-pate stay. The matters are yet to be adjudicated upon by Hon'ble High Court of Delhi. In view of the above facts of malafide alone, the charge sheet is liable to be quashed."

In view of the liberty granted to them to learned counsels for the parties, they also filed their written arguments.

20. During the course of arguments, the counsel for the applicant had vehemently espoused that the bad time of the applicant could start only because he did not favour Mr. Pawanjit Singh against whom a case of FERA violation was being investigated by the Directorate

under his supervision. Having raised the said plea and also the plea that the impugned charge sheets are reaction of respondents to the order of Hon'ble Supreme Court passed on 22.11.2013 revoking his suspension, the learned counsel submitted that impugned charge sheets have been issued to him malafidely. The material before us in these proceedings is not sufficient to enable us to take a view regarding friendship of Mr. Pawanjit Singh and respondent No. 4 and that their relations led to initiation of the present proceedings against him. Similarly, merely because the impugned charge sheets were issued to applicant after the judgment of Hon'ble Supreme Court passed on 22.11.2013, we cannot say that the act is malafide. Nevertheless, we cannot be oblivious of the fact that till 06.01.1998 there was nothing adverse against the applicant and when on 6.01.1998 the office of M/s Intech Technology (Far East) India Limited was searched by team of ED officers with the approval of the applicant, two criminal cases viz, RC No. S18/E0001/1999 dated 29.01.1999 and RC no S19/E0006/99 dated 7.12.1999 were registered against him and recommendations were also made for initiation of disciplinary proceedings against him, such recommendations were made on 23.05.2002 and 29.01.2001. From such developments, one cannot help but to draw inference that the object of the proceedings was not to nab the wrong and bring the wrong doers to book but was to target an individual only for extraneous reasons. At times, such exercise of power is called legal malafide. However, again the respondent No.4 was not competent to initiate disciplinary proceedings against the applicant and the authority competent to initiate the proceedings against the applicant has not been made

party to the OA. In the circumstances, the plea of factual malafide raised by the applicant cannot be accepted as a ground to interfere with the impugned charge sheet. Nevertheless, in W.P. (Crl.) No.1401/2002 and Crl. Rev. P. No.338/2014 and Crl. M. A. No.9095/2014 & Crl. M.A. No.10597/2014, wherein the Hon'ble High Court of Delhi quashed the orders of granting sanction dated 21.06.2002 and 26.11.2002 in RC No.S18 E 0001 1999 and RC No.S19 1999 E0006 1999, Hon'ble High Court has viewed that the investigation against the applicant smacks of intentional mischief to misdirect the investigation as well as withhold material evidence which would exonerate the applicant. Paragraph 90 of the judgment reads thus:-

> "90. In this background, I am compelled to comment on the manner in which the investigation in the subject case has been carried out. The investigation smacks of intentional mischief to misdirect the investigation as well as withhold material evidence which would exonerate the petitioner. These proceedings asseverate to be a glaring case of suggestion falsi, suppresio veri (Suppression of the truth is [equivalent to] the expression of what is false), and hence mala fide. It does not seem to be merely a case of faulty investigation but is seemingly an investigation coloured with motivation or an attempt to ensure that certain persons can go scot free. (Ref: Dayal Singh & Ors vs. State of Uttranchal, reported as (2012) 8 SCC 263). The above conclusion can be gathered from the following facts:
>
> a) In view of the backdrop that the subject criminal cases came to be registered only after representations were sent by the petitioner against his seniors to the Revenue Secretary, and clarification was sought by the Revenue Secretary from those seniors.
>
> b) Mr. Barjatya, whose premises were raided on 01.01.1998 and a debit advice from the Swiss Bank was recovered from his Fax machine, was not prosecuted at all for the reasons best known to the CBI.
>
> c) Furthermore, the CBI relied upon the documents provided by Mr. Mandeep Kapur, Chartered Accountant of Mr. Barjatya obtained from Mr. Eric Huggenberger, attorney of the Swiss Bank Corporation, to prove a case against the

petitioner, who had conducted the said raid. In the reply to LR dated 27.06.2001, the Swiss Bank Corporation did not confirm the authenticity of the above-mentioned letter. The CBI did not further inquire into the same. Such a procedure of investigation is unheard of and gives rise to a reasonable suspicion with respect to the intentions of the investigating agency.

d) The conduct of the CBI brings to mind a paraphrase of the often aphorism by George Orwell:

> "All [men] are equal, but some are more equal than the others."
>
> -George Orwell, Animal Farm

e) The Swiss Bank Corporation in its Reply to the LR dated 27.06.2001 had asked for further details of Mr. Barjatya and other persons named in the LR, like date of birth, address, etc. to verify if they operate any account in the former bank. That was not done for reasons best known to the official respondents. The reply to the LR dated 27.06.2001 also did not confirm about the genuineness of the letter obtained by Mr. Mandeep Kapur, Chartered Accountant of Mr. Barjatya from Mr. Eric Huggenberger, attorney of the Swiss Bank Corporation. The CBI made no further inquiries in relation to any account of Mr. Barjatya in the Swiss Bank Corporation, nor did it confirm the genuineness of the afore-stated letter obtained by Mr. Mandeep Kapur, Chartered Accountant.

f) It is noticed that the CBI had sent a letter to the Law Secretary vide D.O. No.8298/3/1/99(Pt file)/2011/UW IV dated 05.08.2011 wherein he was asked to reconsider his opinion dated 05.04.2011, and it is only after this that the former withdrew his opinion without following proper procedure as is evident from the letter of Ministry of Law & Justice bearing reference F.No.31/2/2014-Vig dated 31.03.2014.

g) As has been observed above, the investigating agency also did not send the Reply to LR dated 27.06.2001 and the relevant Fax from the Swiss Bank dated 13.01.1998 sent to Mr. Barjatya. These documents clearly establish that the Fax in question was a genuine fax and establish the innocence of the petitioner qua the charges of fabricating the Fax in question.

h) The investigation record in RC No.SI9 E0006 1999 was not sent to the sanctioning authority before it granted the sanction dated 26.11.2002. The act of not placing relevant material before the sanctioning authority itself amounts to mala-fide.

i) The entire case of the CBI rested on the testimony of Mr. Abhishek Verma, the approver in the instant case, who vide his application dated 31.07.2014 had retracted his statement and stated that he had made the earlier statement under coercion and threat from the Investigating Officer in the instant case. The testimony of Mr. Abhishek Verma as opined by the learned Special Judge vide its order on approver dated 07.09.2001 is the basis of the allegations against the petitioner in RC No.SI8 E0001 1999. The official respondents themselves later assert that Mr. Abhishek Verma has criminal antecedents and is admittedly not creditworthy.

j) The opinion of the CVC dated 13.04.2015 were also not acted upon promptly by the CBI, despite the CVC being the supervising body for the CBI.

k) It is further noticed from the order of the CAT dated 16.12.2011 that the respondents have continuously opposed the application for the revocation of the suspension of the petitioner from service.

l) The opinion of Ministry of Law and Justice dated 05.04.2011 was also revoked consequent to a letter by the CBI vide D.O. No. 8298/3/1/99(Pt file)/2011/UW IV dated 05.08.2011 to the Law Secretary, requesting him to reconsider his opinion."

21. In view of the aforementioned findings of the Hon'ble High Court of Delhi, we are convinced that the recommendations by the investigating agency to initiate disciplinary proceedings against the applicant was influenced and motivated by extraneous reasons and was in abuse of power and procedure, thus the charge sheets, based on vitiated recommendations, suffer from arbitrariness, which, at times, is also called 'legal malafide'.

22. The challenge to the charge sheet on the ground that there were approval for resumption of the proceedings from the stage they were interfered by the Tribunal is noted to be rejected, for the simple reason, that in the counter affidavits filed by them, the respondents

have taken a specific stand that the approval have not been acted upon and from the fact of issuance of fresh charge sheets, it is explicit that the proceedings have been initiated de-novo. Initially, the applicant was proceeded against departmentally in the year 2001 and 2006, thus his plea that the impugned charge sheets are counter blast of the order of Hon'ble Supreme Court passed on 28.02.2014 can also be not accepted.

23. The further plea espoused by the learned counsel for the applicant with vehemence was that the applicant was placed under suspension in the year 1999 and could be put back in service only in December, 2015. According to him, he has been made to suffer for a long period of almost 16 years for none of his fault. While narrating such facts, he espoused that the disciplinary proceedings now set in motion against him are vitiated by delay. It is stare decisis that there is no straight jacket principle to suggest that the charge sheets/disciplinary proceedings should be interfered merely because there is delay in initiation of the proceedings or conclusion thereof. Nevertheless, it is well established that if charges are not grave, the proceedings initiated after long delay or prolixed after initiation need to be interfered with. The two reasons sufficient to warrant interference with the charge sheet/disciplinary proceedings initiated belatedly, as articulated by Hon'ble Supreme Court are:-

> "(1) That there is a presumption that the disciplinary authority condoned the charges; and
>
> (2) The delay has caused prejudice to the defense of the charged officer.

24. The second ground need to be raised before the disciplinary authority/Enquiry Officer. Besides, these two there can be several other reasons for which the charge sheets/disciplinary proceedings initiated belatedly or unduly prolonged need to be interfered with. One of the such ground may be that the disciplinary authority who is the sole Judge in the disciplinary matter is not fully convinced that the allegations made against an individual constitute misconduct or material placed before it is sufficient to take a decision for proceeding against him, but in the circumstances of the case could not show the confidence and valour to take a decision to drop the proceedings. It is not gainsaid that the executive and the quasi judicial authority, having semblance that the preponderance of material is not sufficient to persuade them to take a decision against the individual prefer to delay its decisions. This may also be a ground to interfere with the disciplinary proceedings when initiated after delay or not concluded for long. As is the position in the present case, the long pending proceeding has adverse affect on the promotional avenues of the employees and when the charges in the disciplinary proceedings are not grave, the agony he undergoes on account of prolonged disciplinary proceedings is more severe then the penalty, he may be subjected to even on conclusion of the proceedings. Likewise, the mental agony of having the disciplinary proceedings pending against him and the attitude of the fellow employees towards him on account of pendency of such proceedings against him become more cumbersome for an employee than the penalty he may be inflicted with early initiation and disposal of the proceedings. When the charges against the employees are grave enough warranting the

imposition of the penalty of dismissal/removal or compulsory retirement, one may take a view that the employee who committed such misconduct deserved to undergo sufferance, he faced as above, but when the charges are not so grave, the charge sheet/disciplinary proceeding should be struck down on account of delay in initiation or conclusion of the same.

25. In the case of applicant, in OA no. 2976/2014, the alleged misconduct was committed by him between November 1996 to December, 1998 and the initial charge sheet (not found fully proved by the disciplinary authority) was issued to him on 13.09.2001 i.e. after almost three years of December, 1998 and five years of November, 1996. The Enquiry into the charges was concluded on 21.10.2002 and it was not proved that the applicant was instrumental in leakage of proposal regarding surveillance of telephone of Mr.Chandraswamy by ordinary dak to Special Director or he did not consult the Director in getting the application of Mr.Chandraswamy filed before the trial Court for medial treatment. The charge of approving the issuance of summons u/s 40 of FERA, 1973 with the ulterior motive of extorting illegal gratification was also not found proved against him. It was also not proved that he violated the direction of Director regarding publicity to the interrogation of Dr.J.K.Jain a senior Member of political party. The finding of the Inquiry Officer on each charges read thus:-

"ARTICLE -1

> It is proved that the CO forwarded a secret proposal regarding surveillance of telephones of Shri Chandraswamy through ordinary dak to the Special

Director and, thus, failed to ensure that the communication be sent in a sealed cover or delivered personally; and the proposal got leakage to Shri Chandraswamy. However, it is not proved that the CO was instrumental in leakage of the proposal.

ARTICLE-II

It is proved that the CO failed to get the applications of Shri Chandraswamy, filed before the trial Court for medical treatment abroad, examined knowing fully well the implications of Shri Chandraswamy going abroad. However, it is not proved that the investigations were pending in the Court or that he did not consult or inform the Director in the matter.

ARTICLE-III

It is proved that the CO abused his position as DD while approving issue of summons u/s 40 of FERA, 1973, at the first instance to Shri Amit Burman on the basis of unverified source information. However, it is not proved that the approval was granted with the ulterior motive of extorting illegal gratification from him.

ARTICLE-IV

This article is of charge is not proved.

ARTICLE-V

It is proved that the CO got summoned Dr. J.K.Jain of Jain T.V and a senior member of a political party on 6.1.1998 for interrogation in an old pending investigation, when 1998 general elections had been announced and that he failed to observe restraint in the case. However, it is not proved that the violated any direction of the Director in this behalf or that he gave publicity to the interrogation of Dr.J.K.Jain."

26. The penalty proposed to be imposed upon him in the matter was of downgrading him to the lower stage in his time scale of pay for a period of three years with further direction that he would not earn increment of pay during the period and on expiry of the period and the reduction would have the effect of postponing his future increment. From the findings of the Enquiry report in respect of the charges levelled against the applicant and the penalty imposed upon him it is clear that the charges were not so grave that the delay of

three to five years in initiation of the proceedings cannot be no ground to interfere with the same. Even after the preparation of the report by the inquiry officer on 21.10.2002, the proceedings was not finalized till 11.12.2008 when the applicant filed OA 2680/2008 before this Tribunal, finally disposed of by this Tribunal in terms of order dated 24.02.2010 quashing the charge sheet. Again after 24.02.2010, the respondents took four years in issuing the impugned memorandum dated 20.03.2014.

27. From the aforementioned, it is clear that at all the stages there was delay on the part of the respondents in pursuing the disciplinary proceedings against the applicant. The reason is obvious i.e. the authorities at various levels were not convinced that the applicant had committed any misconduct. In the note of Shri Sunil Verma, Addl. DIT (Vig) Unit 1, it had been espoused that there was no malafide intention on the part of the applicant which resulted in leakage of proposal to keep surveillance for the telephone of Mr.Chandraswamy; that there was no evidence with CBI to prove the malafide intention of applicant in respect of the allegations mentioned in article 1 and 2 of the charges, as the action had been taken by applicant in discharge of official duties and there could be no charge of lack of devotion to duty against him; the allegations referred to in article 3, 4 and 5 could not be proved on the basis of the documents listed by the CBI in the draft charge sheet. Para 3 to 8 of the note placed on record as Annexure A-5 read thus:

> "3. FR.II is a letter dated 16.05.2001 received from Under Secretary, Ad. IC, Deptt. of Revenue enclosing therewith a copy of Enforcement Directorate's letter F.No.C-3/5/01 dated 05.2001. Vide this letter the Enforcement Directorate has conveyed their comments on the investigation report of the CBI received in the case of Shri

Ashok Kumar Aggarwal. This is in response to Directorate's letter dated 6.2.2001 (page 672/C) vide which the Department of Revenue was requested to provide comments of the Department on the CBIs Investigation Report to the CVC for obtaining their advice and forwarding the vetted chargesheet, in case initiation of proceedings was considered necessary. The comments provided by the Enforcement Directorate are very sketchy and probably will not help the Disciplinary Authority i.e. FM in coming to a conclusion that whether or not initiation of disciplinary proceedings for major penalty is called for.

4. The DIG of Police, CBI/ACB/New Delhi vide his letter dated 29.1.2001 had forwarded the SP's report in case No. PE.DA.1/19990A-0003 for necessary action. As the letter was addressed to the Jt. Secretary and CVO, Ministry of Finance, North Block, New Delhi and to the Director, Directorate of Enforcement, the letter in original was forwarded to the Addl. Secretary, Deptt. Of Revenue for further necessary action without opening a separate file in the Directorate. However, a copy of the DIG's letter as well as SP's report along with its enclosures were retained at pages 607-671/C of this file. The CBI had recommended regular departmental action for major penalty against Shri Ashok Kumar Aggarwal, the then Dy. Director, Directorate of Enforcement. According to the CBI there is sufficient material for initiating this action. The initiation of major penalty has been recommended for the following articles of charges:

Article-1

Shri Ashok Kumar Aggarwal, while functioning as Dy. Director, Delhi Zone, Enforcement Directorate, Lok Nayak Bhawan, New Delhi, during the period between Nov.,1996 to Dec., 1998, was instrumental in leaking out the secret information regarding the proposed surveillance of telephone of Shri Chandraswamy and his associates in the month of Feb., 1998 in as much as he sent the proposal marked "SECRET" through ordinary dak to the Special Director, Enforcement Shri A.P.Kala and failed to ensure that such a communication be either sent in a sealed cover or delivered personally to the officer concerned, resulting in leakage of information regarding proposed surveillance to Shri Chandraswamy because of which the proposal had to be absorted.

By the aforesaid acts said Shri Ashok Kumar Aggarwal failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant in contravention of Rule 3(1)(i)(ii)(iii) of the CCS (Conduct) Rules, 1964.

Article-II

Shri Ashok Kumar Aggarwal, while functioning as Dy.Director, Delhi Zone, Enforcement Directorate, Lok Nayak Bhawan, New Delhi, during the period between Nov., 1996 to Dec., 1998, was instrumental in giving No Objection in the Trial Courts on behalf of Enforcement Directorate to the 5 applications filed by Shri Chandraswamy during April 1998 seeking permission to go abroad ostensibly on medical grounds, without getting the claims made in the applications of Shri Chandraswamy verified and without informing the Director of Enforcement knowing fully well the implications of Shri Chandraswamy proceeding abroad when the investigations were still in progress and the process of cases against Shri Chandraswamy was being monitored by the Hon'ble Supreme Court of India.

By the aforesaid acts said Shri Ashok Kumar Aggarwal failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of Govt. Servant in contravention of Rule 3 (1)(i)(ii)(iii) of the CCS (Conduct) Rules, 1964.

Article-III

Shri Ashok Kumar Aggarwal, while functioning as Dy. Director, DelhiZone, Enforcement Directorate, Lok Nayak Bhawan, New Delhi, during the period between Nov., 1996 to Dec., 1998 by abusing his official position ordered issuing of summons u/s 40 of FERA, 1973 at the first

instance to Shri Amit Burman S/o Shri G.C.Burman of M/s Dabur India Ltd. On the basis of unverified source information with ulterior motive of extorting illegal gratification from them in the month of May/June, 1997.

By the aforesaid acts said Shri Ashok Kumar Aggarwal failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant in contravention of Rule 3 (1)(i)(ii)(iii) of the CCS (Conduct) Rules, 1964.

Article-IV

Shri Ashok Kumar Aggarwal, while functioning as Dy.Director, Delhi Zone, Enforcement Directorate, Lok Nayak Bhawan, New Delhi, during the period between Nov., 1996 to Dec., 1998 by abusing his official position got summoned Shri Basudev Garg a number of times, to his office along with his relations after conducting searches at his premises in a case of suspected FERA violation and threatened & humiliated Shri Basudev Garg

with ulterior motive of extorting illegal gratification from them in the month of May/June, 1997.

By the aforesaid acts said Shri Ashok Kumar Aggarwal failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant in contravention of Rule 3 (1)(i)(ii)(iii) of the CCS (Conduct) Rules, 1964.

Shri Ashok Kumar Aggarwal, while functioning as Dy. Director, Delhi Zone, Enforcement Directorate, Lok Nayak Bhawan, New Delhi, during the period between Nov., 1996 to Dec., 1998, got summoned Dr. J.K.Jain of Jain TV on 6.1.98 for interrogation in an old pending investigation, who was a senior member of a political party and was hoping to get Parliamentary Ticket for Chandni Chowk Lok Sabha Constituency in Delhi in the elections to be held during 1998 and give much publicity to the interrogation of Dr. J.K.Jain by the Enforcement Directorate despite general direction of the Director of Enforcement for observing restraint in politienlly oriented cases /persons during the election period resulting in denial of ticket to Dr.J.K.Jain.

By the aforesaid acts said Shri Ashok Kumar Aggarwal failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant in contravention of Rule 3 (1)(i)(ii)(iii) of the CCS (Conduct) Rules, 1964.

5. With regards to the allegations contained in Article-1 the Directorate of Enforcement in their comments have stated that they agree with the findings given by CBI with reference to the leakage of proposal to keep a surveillance over the telephones of Shri Chandraswamy. No comments have been offered as to whether the leakage of information was deliberate and with any improper motive. The CBI in their report has also not mentioned any evidence which may prove malafide intentions on the part of Shri Ashok Kumar Aggarwal. Although in the article of charge as well as in the imputation in support of Article-1 of the charge the CBI has mentioned that Shri Ashok Kumar Aggarwal failed to maintain absolute integrity. There seems to be no evidence to prove this component of the charge. In view of the above, it can be said that this is a charge where no vigilance angle is involved.

6. With regards to Article-II of the charge the Enforcement Directorate has commented that they have no objection to the initiation of RDA against Shri Ashok Kumar Aggarwal in the matter relating to non-opposing of Shri Chandraswamy's applications for going abroad. In respect of this Article of charge also there is no evidence with the

CBI to prove malafide intentions on the part of Shri Ashok Kumar Aggarwal. Both the action referred to in Article-1 and Article-II were taken by Shri Aggarwal in discharge of his official duties and there could be charge of lack of devotion to duty, but unless there are evidence to prove that these action were done with an improve motive, the case may not be fit for charging that he failed to maintain absolute integrity. Thus, so far as these two articles of charges are concerned this may not be a case of initiating major penalty proceedings.

7. Regarding Article -III, IV & V, the Enforcement Directorate has commented that the allegations and CBI's finding there on are not born out of there Directorate's case records. However, on going through the list of documents enclosed by the CBI along with the draft charge sheet (pages 657-658/C) on the basis of which the charges are to be proved. There is mention of photocopies of certain folders pertaining to Shri Amit Burman of M/s Dabur India Ltd., M/s Jain Studio and Shri Basudev Garg. From the numbering of these files, it appears that these files are pertaining to the Enforcement Directorate. In view of the Enforcement Directorate's comments, the allegations cannot proved with the help of documents listed by the CBI in their draft chargesheet. The CBI probably wants to prove these charges by the oral evidence of the private persons included in the list of witnesses.

8. On the basis of limited information received from the Enforcement Directorate it can be said that there is a case for initiating disciplinary proceedings so far as Article-A and Article-II are concerned, however, in the absence of any evidence to prove malafide intentions on the part of Shri Ashok Kumar Aggarwal it may be difficult to prove that Shri Ashok Kumar Aggarwal failed to maintain absolute integrity. In view of the fact that the allegations contained in Article-III, iV and V of the charge are not born out of the Enforcement Directorate's case records no comments can be offered, however, the CBI seems to have based their case on the oral evidence by certain private persons the Department may agree for initiation of disciplinary proceedings.

28. Even the DG of Income Tax while sending the proposal for initiation of the proceeding recorded that CBI had based its case on oral evidence given by certain private persons. Para 7 of the note read thus:-

> "7.... The CBI seems to have based their case on the oral evidences given by certain private persons, whose names have been listed in the list of witnesses against Shri Ashok Aggarwal in the draft chargesheet forwarded by the CBI."

29. From the aforementioned it is clear that the authority in the helm of affairs in the department was not convinced that a case for initiation of disciplinary proceedings against the applicant had been made out. There is no explanation of delay by the respondents for the period 1996/1998 to 13.09.2001 and 24.02.2010 to 20.03.2014. In view of the charges as proved against the applicant in terms of the inquiry report dated 21.10.2002 and no explanation of delay in initiation of the disciplinary proceedings till 13.09.2001 (quashed by the Tribunal) and fresh initiation of charge sheet 20.03.2014 under challenge before us and the fact that the applicant is in woods of litigation for last 16 years i.e. major part of his service career, we are satisfied that the plea of delay raised on behalf of the applicant to quash the charge sheet deserve to be accepted.

30. The only charge against the applicant in memorandum dated 14.3.2014 challenge in OA 2977/2014 is that as in charge of Delhi Zone of Enforcement Directorate, he launched an enquiry against Mr. Pawanjit Singh, Managing Director of M/s Intech Technology (Far East) India Limited to cause him undue harassment and failed to check and stop the search party from forcibly bringing him to Enforcement directorate office on completion of the search on 06.01.1998. There is no allegation that the applicant did so for extraneous consideration or with ulterior motive. The charge sheet read thus:-

> "ARTICLE OF CHARGE AGAINST SHRI ASHOK KUMAR AGGARWAL, JOINT COMMISSIONR OF

INCOME TAX (EX.DEPUTY DIRECTOR, ENFORCEMENT DIRECTORATE, DELHI ZONAL OFFICE), NEW DELHI,

Shri Ashok Kumar Aggarwal S/o Shri Ram Bilas Aggarwal (IRS: 85), while working in the capacity of Deputy Director, Enforcement Directorate, Delhi Zone,during the period January, 1998 to December, 1998 committed gross misconduct and acted in a manner which is unbecoming of his being a public servant in as much as he failed to maintain devotion to his duty as in-charge of the Delhi Zone of Enforcement Directorate, in the matter of an information and subsequent enquiry against one Shri Pavanjit Singh, Managing Director of M/s Industrial Technology (Far East) Ltd., M-8, Greater Kailash,Part-II, New Delhi, which was launched in a manner designed to cause undue harassment by unbridled use of power vested in Shri Ashok Kumar Aggarwal.

That the information against Shri Pavanjit Singh, as mentioned above, did not emanate from a registered formal or normal source of Enforcement Directorate, but the same was initiated by Shri Ashok Kumar Aggarwal himself and got recorded through one of his subordinate Shri B.C.Shah, Enforcement Officer, in the concerned file of his Zone.

That a charade of verification was got conducted by him without commenting upon the “clandestine manner” of transferring funds by the company of Shri Pavanjit Singh and without exploring the possibility of procuring evidence through other means, searches were concluded in one of his office premises of Greater Kailash, New Delhi.

That Shri Ashok Kumar Aggarwal, who was himself supervising the enquiry against Shri Pavanjit Singh, failed to check and stop the search party from forcibly bringing Shri Pavanjit Singh to Enforcement Directorate office on completion of the search on 06.01. 1998, who was subsequently kept there throughout the night and til noon of 07.01.1998, for so-called recording of statement which caused undue harassment to him.

That Shri Ashok Kumar Aggarwal also caused to original passport to be continuously called for by the Inquiry Officers of his Zone from Shri Pavanjit Singh by issuing summons to him, whereas the copy of passport had already been deposited by him with the I.O on 06.01.1998 itself, and there was no necessity for calling it again.

That Shri Pavanjit Singh was an NRI as evident from the scrutiny of his passport and note dated 14.01.1998 of

Shri B.C.Shah, Enforcement Officer. He was being summoned to enquire about his foreign bank account. He had earlier appeared on several occasions and had submitted information. However, he being an NRI, was eligible to maintain a foreign bank account and the provisions of FERA as such were not applicable to him in this regard. Hence, there was no need of issuing any further summons to him.

That Ashok Kumar Aggarwal ignored this point and passed no direction for scrutiny of the case records based on merit.

That Shri Ashok Kumar Aggarwal in the above manner, caused immense harassment and trauma to Shri Pavanjit Singh by arbitrary inquiry against him, which included, issuance of repeated summons even when Shri Pavanjit Singh had given written statement and supplied the records/information as asked by the Enforcement Directorate officials; launching of prosecution u/s 56 of FERA; and issue of LB alert notice etc.

Shri Ashok Kumar Aggarwal has, thus, committed gross misconduct and contravened Rule 3 (1)(i)(ii)(iii) of the CCS (Conduct) Rule, 1964."

The allegation made in the charge sheet pertained to January 1998. The initial charge sheets quashed in terms of order dated 24.02.2010 was issued on 1.12.2006 i.e. after almost 9 years.

31. Even the fresh charge sheet impugned herein the present OA before us was also issued on 14.03.2014 i.e. after four years of the order passed by this Tribunal quashing the charge sheet dated 1.12.2006. There is no explanation for the said delay also. One of the plea, could be put forth by the respondents in respect of the period between 24.02.2010 and the date of fresh charge sheet i.e. March, 2014 in both the cases may be that the order of the Tribunal was challenged before Hon'ble Supreme Court. Such plea could be explanation for delay only if the respondents could have awaited the judgment of Hon'ble Supreme Court before issuance of the charge sheet. Once without awaiting the decision of the Hon'ble Supreme

Court they have issued the charge sheet, then there should be justification of the delay. When there is no such justification, the belief that the authorities in the helm of affairs in respondents organization themselves were not convinced that the applicant had committed any misconduct is strengthened. The explainability for delay is also espoused in note dated 4.10.2006 of Chairman, CBDT who has simply regretted the delay. The note contained in the relevant file in this regard read thus:-

> "There has been inordinate delay in putting up the file for sanction. In fact the file should have put up for FM's approval and sanction in November-December, 2005. DGIT (Vig.) expressed his regrets for the delay in proceeding. He has also stated shortage of officers in the Vigilance, Directorate. Requests have been made for posting officials in the Vigilance Directorate but no posting has been done. Further a time limit is required to be fixed for processing such cases in the Vigilance Directorate. The delay in submitting this case for sanction is regretted.
>
> In any case, FM's approval is being sought for the initiation of major penalty in this case, as well approval for the appointment of Inquiry and Presenting Officer.
>
> Chairman/CBDT The delay in processing this case is regretted. 'A' above may kindly be approved."

32. As is explicit from the plain reading of the Article of charge (ibid) the allegations against the applicant are not grave at all as the only lapse attributed to him is causing and not preventing harassment to Mr. Pawanjit Singh, who was summoned in some investigation. As can be seen from Section 40 of Foreign Exchange Regulation Act 1973, such is the power of the authority. Section 40 read thus:-

> "40. Power to summon persons to give evidence and produce documents.—
>
> (1) Any gazetted officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document during the course of any investigation or proceeding under this Act.

(2) A summon to produce documents may be for the production of certain specified documents or for the production of all documents of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by authorised agents, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required: Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

(4) Every such investigation or proceeding as aforesaid shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860)."

33. In the note dated 30.10.2002 Mr.B.P.S.Bisht, Addl. DIT (Vig.) HQ had concluded that the CBI had failed to establish any case of harassment or irregularity against the applicant herein. The relevant excerpt of the note read thus:-

> "3.1. It needs to be pointed out that if, indeed, there was harassment and breaking of law in the conduct of the inquiry against Sh. Pavanjit Singh, it is the officials who actually conducted the search and the interrogation, etc., who would be primarily responsible. It is established law that subordinate officers violating the law cannot escape under the plea of "superior orders". The CBI report arbitrarily absolves the ED officials who actually conducted the search and subsequent inquiry, on the specious ground that they were acting on the orders of their superior Sh.Ashok Aggarwal. The statements of these officials, who were themselves directly involved in the execution of the search and inquiry, seem to be self serving and intended only to shift the blame from themselves. The orders/directions attributed to Sh.Aggarwal, in compliance to which Sh. Pavanjit Singh was alleged harassed, are reported to have been verbal for the most part and for this, we have only the word of officials like Sh. Ravindra Nath, etc. against that of Sh.Ashok Aggarwal.
>
> CONCLUSION
>
> 4. It is, thus, seen that the CBI report fails to establish any case of harassment or irregularity against Sh.Ashok Kumar Aggarwal. There might have been some error of

judgment on his part as a Supervisory Authority but no mala fide can be imputed from the facts. There is no evidence to show that he was involved in the harassment of Sh. Pavanjit Singh, otgher than the statements of officials who were directly involved in the so called harassment and who were prima facie to blame for the same. Further, no motive for such harassment has been identified by the CBI, which has itself conceded that the allegations of monetary demand from the complainant etc., are not substantiated. As such, on the basis of the CBI report, no case can be made out for departmental action against Sh. Ashok Kumar Aggarwal and the CBI recommendation in this regard is not found acceptable.

PROPOSAL

5. It is proposed that the approval of the Chairman, CBDT, may be solicited for referring the matter to the CVC for its first stage advice, with the recommendation that this case against Sh. Ashok Kumar Aggarwal be closed."

34. In view of nature of the allegations against the applicant and the fact that the incident in respect of which the applicant has been charge sheeted is now more than one and half decade old, we are of the view that the same is vitiated and is liable to be interfered with on the ground of delay alone.

35. In the counter reply and written arguments filed on behalf of the respondents, reliance has placed on the judgment of Hon'ble Supreme Court in **Union of India & another** v. **Kunisetty Satyanarayana**, (2006) 12 SCC 28 and the Order of this Tribunal in **Ravindranath Narendranath Padukone** v. **Union of India** (O.A. No.623/2013) decided on 21.02.2013 wherein said judgment is of the Apex Court has been relied upon. Having relied upon the said judgments, learned counsel for respondents submitted that the charge sheet does not give rise to the cause of action. Such blanket argument is not acceptable, in paragraph 16 of the judgment, Hon'ble Supreme Court ruled that in some very rare and exceptional cases the

High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. Paragraph 16 reads thus:-

> "16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

36. In **M.V.Bijlani** Vs. **Union of India & Ors** (2006) 5 SCC 88), the charge sheet was interfered being issued after 6 years on the ground that even the basic material on which departmental proceeding could be initiated was absent.

37. In **Inderjit Singh & Others** Vs. **Food Corporation of India and Others** (2002 (4) SLR vol.162 page 233), while quashing the charge sheet on the ground of delay, Hon'ble Punjab and Haryana High Court viewed thus:-

> "8.After considering the rival contentions of the parties, we are of the opinion that there is a merit in the contentions raised by the learned counsel for the petitioners. Every case has to be decided on its own facts. It is the admitted case that the respondent-Corporation is allegedly raising the shortage of paddy of the year 1979-80 and 1981-82. After a lapse of more than 20 years calling upon the so-called delinquent officials to explain the shortage when they are not posted at that station would be an extreme act of hardship which will tantamounts to denial of right of reasonable defence which is even recognised by our Constitution. It is the case of the petitioners that the charges levelled against them were well within the knowledge of the respondents. Had the charge sheets been issued at the relevant time, the petitioners would have in a position to rebut the allegations. There is no satisfactory explanation for the inordinate delay in the issuance of charge sheets forthcoming from the written statement of the respondents. In such a situation, there is no difficulty on our part to hold that the petitioners have been deprived of their right of reasonable defence and that they would be deprived of their right/chance to produce evidence after a

> lapse of more than 20 years to show that no shortage took place. The issuance of the charge sheet in the present case after a lapse of 20 years itself caused serious prejudice to the petitioners. Therefore, we are of the opinion that the department cannot be allowed to take the benefit of their own lapse by issuing charges sheets after a lapse of 20 years. Reliance can be placed upon the judgment of this Court dated 6.5.1994 passed in CWP No. 13008 of 1993 titled Dalip Singh v Food Corporation of India. Similar view was taken on the judicial side in CWP No. 10438 of 1992 Bhagwan Singh Dhillon v. Food Corporation of India."

38. In **P.V.Mahadevan** Vs. **M.D. Tamil Nadu Housing Board** (JT 2005) (7) SC417), Hon'ble Supreme Court ruled that allowing the respondents to proceed further with the departmental proceedings at the distance of time would be prejudicial to the appellant and keeping a higher Government official on the charge of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. In the said case, Hon'ble Supreme Court could also view that the protracted disciplinary enquiry against a Government employee should be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. Para 16 of the judgment read thus:-

> ''16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of

> fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

39. In **Rajbir Singh Gill** Vs. **State of Punjab and another** (1997 (7) SLR 423), Hon'ble Punjab and Haryana High Court viewed that the initiation of disciplinary proceedings after a lapse of period of 11 years is clearly arbitrary. Para 10 and 11 of the judgment read thus:-

> "10. In the peculiar circumstances detailed above, we have no hesitation, whatsoever, to hold that the initiation of the departmental proceedings in the instant case after the lapse of a period of 11 years was clearly arbitrary, specially in the light of the fact that the alleged incident came to the knowledge and notice of the authorities immediately on its occurrence. We are also of the opinion that holding a departmental enquiry at such a belated stage would deprive the petitioner of a reasonable opportunity to defend himself, as with the passage of time he would have certain forgotten various vital issues connected with the aforesaid incident.
>
> 11. In the facts and circumstances narrated above, the petitioner will be deemed to have retired from service with effect from 31.10.1997. He shall also be entitled to all consequential retrial benefits. The charge-sheets dated 11.5.1998 and 22.6.1998 are quashed as being contrary to the provisions of Rule 2.2 (b) of the Punjab Civil Service Rules, Volume II; the charge sheet dated 14.7.1995 is also quashed for the reasons mentioned above."

40. In **State of A.P**. Vs. **N.Radhakishan** (1998)(4) SCC 154), while discussing and analysed the scope of interference in the disciplinary proceedings on the ground of delay, the Hon'ble Supreme Court ruled thus:-

> ''19. It is not possible to lay down any pre-determined 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 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 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 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 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 its 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.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, and all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti- Corruption Bureau had pointed out that no witnesses had been examined before he gave his report.

The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to

> obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos.''

41. In **State of Punjab and Others** Vs. **Chaman Lal Goyal** (1995) 2 SCC 570), Hon'ble Supreme Court ruled that it is trite that the disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities and they cannot be initiated after a lapse of considerable time. In the said judgment, their Lordships viewed that the delay in initiation of proceeding is bound to give room for allegations of bias, mala fides and misuse of power and if the delay is too long and is unexplained, the Court may well interfere and quash the charge sheet. Regarding length of delay calling for interference, their Lordships ruled that it depends upon the facts of the given case. Para 9 of the judgement read thus:-

> ''9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent

officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing. Now, let us see what are the factors in favour of the respondent. They are:

> (A) That he was transferred from the post of Superintendent of Nabha Jail and had given (sic up) charge of the post about six days prior to the incident. While the incident took place on the night intervening 1/1/1987/2/1/1987 the respondent had relinquished the charge of the said office on 26/12/1986. He was not there at the time of incident.
>
> (B) The explanation offered by the government for the delay in serving the charges is unacceptable. There was no reason for the government to wait for the Sub-Divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration. Head of the Department, itself. The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub-Divisional Magistrate was not so connected. In the circumstances, the explanation that the government was waiting for the report of the Sub-Divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.
>
> (C) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry."

42. In **Meeran Rawther** Vs. **State of Kerala** (2001 (5) SLR 518), Hon'ble Kerala High Court (DB) ruled that the delay in initiation of proceedings by itself constitute denial of reasonable

opportunity to show cause and that would amount to violation of the principles of natural justice. Para 11 to 15 of the judgment read thus:-

> ‘’11. We notice with the above mentioned findings of the Secretary (Taxes I), Board of Revenue forwarded report to the Government. No action was taken by the Government for eight years even though letter of the Board of Revenue was received by the Government in the year 1992. Now on the basis of a letter of the Board of Revenue dated 1.1.1999 memo of charges dated 18.1.2000 has been issued. We are inclined to take the view that the present memo of charges dated 18.1. 2000 was an off shoot of the proceedings which led to the issuance of memo of charges dated 15.10.1998. We notice that for the last 14 years Government kept quiet and did not take any action with regard to an incident that happened in 1986. Facts would reveal that in 1987 memo of charges was issued to the appellant and a preliminary enquiry was conducted and Secretary (Taxes I), Board of Revenue had made a note that it would be difficult to proceed with the case legally. Government did not find it necessary to proceed with the matter. We are satisfied in the facts and circumstances of this case that the present memo of charges dated 18.1. 2000 is ill-motivated and vitiated due to extraneous reasons.
>
> 12. We are unable to understand why the Government all on a sudden issued the memo of charges dated 18.1. 2000 with regard to certain incidents happened 14 years ago on which the Secretary (Taxes I), Board of Revenue, had opined that it would be difficult to prove the charges legally as early as in 1992. Matter rested there for years but resurrected all on a sudden. If the Government had any intention to take action with regard to an incident happened in 1986 it would have taken then and there. The precipitated action by the Government by issuing the memo of charges dated 18.1. 2000 was not called for or could be justified at this distance of time. In the facts and circumstances of this case we are satisfied that the motive induced by the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which is bonafide believed he had committed, but to wreak vengeance on him for incurring the wrath of the member of the Legislative Assembly.
>
> 13. We may in this connection refer to some of the decisions of the apex court wherein the court had quashed disciplinary proceedings on the ground of delay, in State of Madhya Pradesh v. Bani Singh and another, AIR 1990 S.C.1308).
>
> That was a case where departmental proceedings were initiated against an officer by issuing charge sheet dated 224.1987 in respect of certain instances that happened in 1975-76 and when the said officer was posted as Commandant, 14th Battalion. Memo of charges was quashed by the Tribunal on the ground of inordinate delay in initiating

disciplinary proceedings. The matter was taken up before the apex court. The court held as follows:

> "The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

In A.R. Antulay and another v R.S. Nayak and another v. R.S.Nayak and another, 1992 (1) S.C.C. 225) the apex court was dealing with criminal prosecution. The court held that undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise. Later the apex court in State of Punjab v. Chaman Lal Goyal, 1995 (2) S.C.C. 570) held:

> "The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this court in A.R. Antulay v. R.A. Nayak. Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that ultimately the court has to balance and weigh the several relevant factors balancing test or balancing process and determine in each case whether the right to speedy trial has been denied in a given case. It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges or the conviction, as the case may be, will be quashed."

The court also held that wherever delay is put forward as a ground for quashing the charges, the court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In this connection we also refer to the decision of the Gujarat High Court in Mohanbhai Dungarbhai parmar v. Y.B. Zala and others (1980 (1) SLR 324) wherein the court held that delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee

to have a computer like memory or to maintain a day-to-day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a pre-vision. Nor can he be expected to adduce evidence to establish his innocence for after inordinate delay he would not recall the identity of the witness who could support him. Delay by itself therefore, will constitute denial of reasonable opportunity to show cause and that would amount to violation of the principles of natural justice.

14. We may also refer to the decision of the Mysore High Court in Andrews v. Dist. Educational Officer, Bangalore (1968 Lab I.C. 756). In that case certain charges were framed against the government servant in the year 1961 to which we sent his explanation. Later in March 1964 charges were again framed against him. The charges were substantially the same as those that were framed against him in 1961. The courts held as follows:

> "If after the production of this explanation, the disciplinary proceeding was not continued, what should reasonably follow is that the disciplinary authority was satisfied with the explanation and dropped the charges. The strength of that inference receives reinforcement from the fact that it was only after a period of 3 1/2 years that the charges were once again revived. The great and inordinate delay in the revival of those charges and the antecedent discontinuance of the earlier disciplinary proceeding over a long tract of time can have no other meaning than that the disciplinary authority was satisfied with the explanation offered by the petitioner on October 1961, and that in consequence the proceedings against him were discontinued and abandoned. If that was how the earlier disciplinary proceeding terminated, it was not within the competence of the disciplinary authority to exhume those charges and to make them subject-matter of another disciplinary proceeding, as late as in the year 1964."

The abovementioned principle was followed by the Madras High Court in E.S. Athithyaraman v. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department (AIR 1970 Mad 170). In that case the departmental officer, on framing charges against the delinquent called upon him to submit explanation and on

receiving explanation again asked him whether he desired oral enquiry or only to be heard in person. That letter was acknowledged but not replied by the delinquent. Thereupon the enquiry officer went through the files and explanation and, without conducting actual enquiry, held that the charges were established and proposed punishment. That was a case

where enquiry was ordered after seven years. The court held that the failure to hold actual enquiry, orders regarding delinquent's promotion and long lapse of period in passing final order, were circumstances from which him whether he desired oral enquiry or only to be heard in person. That letter was acknowledged but not replied by the delinquent, Thereupon the enquiry officer went through the files and explanation and, without conducting actual enquiry, held that the charges were established and proposed punishment. That was a case where enquiry was ordered after seven years. The court held that the failure to hold actual enquiry, orders regarding delinquent's promotion and long lapse of period in passing final order, were circumstances from which reasonable inference could be drawn that delinquent's explanation was accepted and proceedings were dropped.

15. We may in this case notice that the charges were levelled against the appellant with regard to an incident happened in 1986. We also notice in 1987 memo of charges was issued to him on the basis of which enquiry was conducted by the Secretary who made a note on 3.9.1992 that it would be difficult to pursue the case legally. We must take it that the said opinion has been accepted by Government. Government have issued the present memo of charges with regard to an incident which happened 14 years ago. There is no acceptable explanation for the delay. In the facts and circumstances of the case, we hold that the present memo of charges has been issued since the charges levelled against him in the memo of charges dated 15.10.1998 could not be proved. We also hold that the present memo of charges were vitiated by malafide and is ill-motivated and issued for improper purpose. We therefore quash Ext. P1 memo of charges against the petitioner. Consequently the judgment of the learned single judge stands set aside."

43. In **Union of India and Anr.** Vs. **Hari Singh** (W.P (C) no.4245/2013, Hon'ble Delhi High Court ruled thus:-

''57. In the instant case, so far as delay is concerned, the petitioners do not remotely suggest that the respondent attributed to any delay. It is a hard fact that there is delay which is abnormal and extraordinary. The explanation of the petitioners is completely unacceptable for the reason that it is an after thought. In fact the petitioners had available with them the entire record which they claimed to have acquired belatedly.

58. It would be most inappropriate to accept the only justification tendered by the respondents of merely having written a few communications to the DRI for the documents. In any case, if the petitioner was serious about initiating

disciplinary action in the above noted circumstances, it could have done so. We have noted above that the petitioner had available with them the necessary record and there was really no reason or occasion for delaying the proceedings for want of original documents. The final adjudication order as well as all inquiry reports was based on the records of the petitioners. Even after obtaining the inquiry report, the respondents delayed the matter not by one or two years but by several years as set out above.

59. We find that the courts have even held that delay in initiating disciplinary proceedings could tantamount to denial of a reasonable opportunity to the charged official to defend himself and therefore be violative of the principles of natural justice. In this regard, reference may usefully be made to the pronouncement of the Kerala High Court reported at 2001 (1) SLR 518 Meera Rawther Vs. State of Kerala wherein it has been held as follows:-

"3. The court also held that wherever delay is put forward as a ground for quashing the charges, the Court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In this connection we also refer to the decision of Gujarat High Court in Mohanbhai Dungarbhai Parmar vs. Y.B. Zala and Others, 1980 (1) SLR 324 wherein the Court held that delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee to have a computer like memory or to maintain a day-today diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a prevision. Nor can he be expected to adduce evidence to establish his innocence for after inordinate delay he would not recall the identity of the witness who could support him. Delay by itself therefore, will constitute denial of reasonable opportunity to show cause and that would amount to violation of the principles of natural justice."

60. So far as the prejudice is concerned, the long period which has lapsed between the alleged transaction and issuance of charge sheet would by itself have caused memory to have blurred and records to have been lost by the delinquent. Therefore, the respondent would be hard put to trace out his defence. The prejudice to the respondent is writ large on the

face of the record. The principles laid down by the Supreme Court as well as by this court in the judgments cited by the respondent and noted above squarely apply to the instant case.

61. Certain intervening circumstances which are relevant and material for the purpose of the present consideration, deserve to be considered. We note such circumstances hereafter.

62. On the 23rd of September, 2012 the petitioner was promoted to the post of Superintendent, after evaluation in selection by the Departmental Promotion Committee and due vigilance clearance.

63. Learned counsel for the petitioner has also drawn our attention to the pronouncement of the Tribunal in OA No. 2727/2010 titled Joseph Kouk v. Union of India & Another. It is important to note that Joseph Kuok was implicated in the same incident as the present respondent. He also assailed the disciplinary proceedings similarly commenced against him by way of O.A.No.2777/2010. The Central Administrative Tribunal allowed Joseph Kouk's petition on the ground of inordinate and unexplained delay on the part of the respondent in issuing the charge memo. In the impugned order, the Central Administrative Tribunal has relied upon its adjudication in the Joseph Kouk matter.

64. We have been informed that eight officers out of the twenty three who were named in the report dated 6th August, 2003 have been permitted to retire. The petitioners permitted these eight officers to retire voluntarily from service. No disciplinary proceedings were initiated against them before they retired. It is trite that an employee against whom disciplinary proceedings were being contemplated would not be permitted to leave the organization or to voluntarily retire from service. It is apparent therefore, that the respondents themselves did not consider the No.4245/2013 the matter as of any serious import affecting the discipline of the department.

65. In view of the above narration of facts, the delay in initiation of the proceedings certainly has lent room for allegations of bias, mala fide and misuse of powers against the respondent by the petitioners. In the judgment reported at 1995 (1) ILJ 679 (SC) State of Punjab v. Chaman Lal Goyal it has also been observed that when a plea of unexplained delay in initiation of disciplinary proceedings as well as prejudice to the delinquent officer is raised, the court has to weigh the facts appearing for and against the petitioners pleas and take a decision on the totality of circumstances. The court has to indulge in a process of balancing.

66. The alleged misconduct claimed to have been done by the respondent Hari Singh has also not been treated to be a major delinquency by the respondent in the light of the principles laid down in Meera Rawther (Supra). It, therefore, has to be held that the delay in initiating disciplinary proceedings would constitute denial of reasonable opportunity to defend the charges in the case and therefore, amounts to violation of principles of natural justice.

> 67. The plea of the petitioners that they did not have the original documents or certified copies thereof is baseless and rightly rejected by the Tribunal in the impugned order. As noted above, the petitioners were in possession of photocopy of original shipping bills which photocopy had been prepared by them and were available throughout. Even if the plea that the original documents or certified copy were necessary for initiating the disciplinary proceedings were to be accepted, the action of the respondents was grossly belated and certainly the long period which has lapsed was not necessary for procuring the same.
>
> 68. The respondents have failed to provide a sufficient and reasonable explanation for the delay in initiating the disciplinary proceedings against the petitioner.
>
> 69. We have noted the judicial pronouncements laying down the applicable consideration in some detail hereinabove only to point out that the law on the subject is well settled. The petitioners were fully aware of the position in law as well as of the necessary facts to adjudicate upon the issue. In our view, the present writ petition was wholly inappropriate and not called for.
>
> 70. For all these reasons, the judgment of the Tribunal cannot be faulted on any legally tenable grounds.
>
> The writ petition and application are devoid of legal merits and are hereby dismissed.
>
> The respondent shall be entitled to costs of litigation which is are quantified at Rs.20,000/-."

44. The next ground taken by the applicant in the Original Application is that when the CBI had recommended initiation of disciplinary proceedings against the applicant, it never sent relied upon documents to the disciplinary authority and in the absence of such documents being sent to the authority and the application of mind by it, the disciplinary proceedings stand vitiated. The grounds taken in this regard in para (J) of OA 2977/2014 and para (g) of OA 2976/2014 read thus:-

‘’(J). Because as per CBI (Crime Manual) 1991, CBI while recommending for departmental action, a number of documents namely SP’s report, draft charges, statement of imputations of misconduct, list of witnesses, list of documents, copies of relied upon documents and other relied upon documents are required to be sent to the department authorities and this requirement is mandatory and no other scope or discretion is available. In the instant case, though the CBI had recommended for departmental proceeding against the applicant vide communication dated 23.5.2002 but the relied upon documents were not sent along with the report. It was only after obtaining CVC first advice and comments of ED on the said CBI’s report that it was thought desirable to seek copies of relied upon material including statements of witnesses from CBI on 24.10.2005. Hence, the matter was processed only on the basis of CBI’s report and without considering the relied upon material. Moreover, the said relied upon material was never put up to the disciplinary authority and his approval was taken on the report prepared by Vigilance Wing of the Department and as such, the entire action of initiation of disciplinary action without considering and examining the relevant documents is illegal, void and ab-initio.

xx xxx

(g) Because as per CBI (Crime Manual) 1991, CBI while recommending for departmental action, a number of documents namely SP’s report, draft charges, statement of imputations of misconduct, list of witnesses, list of documents, copies of relied upon statements and other relied upon documents are required to be sent to the department authorities and this requirement is mandatory and no other scope or discretion is available. In the instant case, though the CBI had recommended for departmental proceeding against the applicant vide communication dated 29.01.2001 but the relied upon documents were not sent to departmental authorities and as such, the entire action of initiation of disciplinary action without considering and examining the relevant documents is illegal, void and ab-initio.”

45. The plea has been rebutted by the respondents in the following words:-

> "(J). Contents of the ground J are baseless hence denied. It is submitted that in the present case the file was received from the Department of Revenue on 06.10.2005. The respondent's office vide letter dated 24.10.2005 requested the CBI to provide the copies of the listed documents, The CBI vide letter dated 14.11.2005 provided the copies of the documents. A note, accordingly, was submitted to the DA alongwith the relevant documents for soliciting the approval for initiating the major penalty proceedings. The DA after examining the entire facts and records granted the approval for initiating the major penalty proceedings on 04.10.2006.
>
> xxx xxx
>
> (g-h). Contents of the ground G-H are misconceived and hence denied. It is submitted, that the DA after appreciating the entire material and documents on record, and independent application of mind, gave approval to initiate major penalty proceedings against the applicant. Moreover, the reference of the facts in the present OA, as stood at the time of pendency of the earlier quashed charge sheet, has no relevance, in view of the liberty granted by this Hon'ble Tribunal vide order dated 24.02.2010."

46. As can be seen from the aforementioned when in OA 2977/2014, the respondents have taken a stand that the documents were placed before the disciplinary authority, in OA 2976/2014 they have stated that the disciplinary authority granted approval for initiation of the proceedings after studying the entire material and documents on record and independent application of mind. As can be seen from the contents of note of Addl. DIT (Vig) HQ dated 13.10.2002 placed on record as annexure A-10 to OA2977/2014 the orders/direction attributed to the applicant herein in compliance to which Shri Pavanjit Singh was allegedly harassed were verbal for

most of the part, thus it is not understood that before approving the charge sheet against the applicant, the disciplinary authority had applied its mind to which documents. At the cost of repetition, the relevant excerpt of the note is again reproduced hereinbelow:-

> "'The orders/directions attributed to Sh.Aggarwal, in compliance to which Sh. Pavanjit Singh was alleged harassed, are reported to have been verbal for the most part and for this, we have only the word of officials like Sh. Ravindra Nath, etc. against that of Sh.Ashok Aggarwal."

Similarly, in the note placed on record as annexure A-5 to OA 2976/2014 (page 83), it is recorded that the allegation against the applicant could not be proved with the help of documents listed by CBI in their draft charge sheet and the CBI probably wanted to prove the same by oral evidence of private persons included in the list of witnesses. At the cost of repetition, the relevant excerpts of the note is reproduced hereinbelow:-

> ".. the allegations cannot proved with the help of documents listed by the CBI in their draft chargesheet. The CBI probably wants to prove these charges by the oral evidence of the private persons included in the list of witnesses."

Thus the stand taken by the respondents in their reply is in conflict with the factual matrix recorded in the noting. It is indubitable that at the time of issuance of charge sheet, the disciplinary authority is not required to record the reason, far less the detailed reason. Again, since the oral enquiry is provided only for the purpose of giving the delinquent officer an opportunity to put forth his defence and the Enquiry officer is supposed to right a detailed report at

end of such inquiry, normally at the stage of initiation of enquiry proceeding the disciplinary authority is required only to record a satisfaction that the matter/charges drafted need to be enquired into. Once the draft charges are approved by the disciplinary authority, even the failure to grant opportunity to the delinquent officer to show cause that why the proceedings should not be initiated against him would also not vitiate the proceedings, again for the simple reason that at this stage the disciplinary authority is not required to record the detailed reason and once the charge sheet is approved by it, there is a presumption that it is satisfied that the matter need to be enquired into. However, in the case like the present one, where the recommendation for initiation of proceeding was by an external agency and the authorities in the helm of affairs emphasized that no case had been made out for initiation of proceeding against the applicant, least the disciplinary authority was required to say that despite such detailed notes it had certain documents or material warranting initiation of proceeding against the applicant and reference to such documents/proceedings should have been made. In the absence of comment upon the discussion and analysis brought to fore before the disciplinary authority and a decision taken to initiate the proceedings, it can be fairly viewed that there is non application of mind to the facts of the case by the disciplinary authority and for that the purpose of para 5/481 of the CBI (Crime) Manual, 1991 is defeated. The said para read thus:-

> ‘’ Documents to be sent to departmental authorities for taking departmental action.

> 5/481 The following documents should be sent to the departmental authorities for taking Regular Departmental Action for major penalty in CBI cases:-
>
> (a). Supdt. Of Police's Report
> (b). Draft of Articles of Charges (Drat Charges)
> (c). Statement of imputations of misconduct or misbehaviour in support of the Articles of Charges (Statement of allegations)
> (d). List of Witnesses
> (e). List of documents
> (f). Copies of Statements relied upon
> (g). Copies of documents relied upon."

47. In **Than Singh** Vs. **Union of India and Others** (CWP 3448/1998), Hon'ble Delhi High Court (Division Bench) comprising of Hon'ble Mr. Chief Justice S.B.Sinha and Hon'ble Mr. Justice A.K.Sikri) viewed that non application of mind in initiation of charge sheet can be one of the ground to interfere with the same. Para 12 of the judgment read thus:-

> "12. It is not in dispute that after the petitioner submitted his explanation in the years 1982 and 1983, no further action had been taken. The petitioner had been promoted twice unconditional. He obtained the vigilance clearance. There cannot be any doubt whatsoever that the writ petitioner was entitled to raise the question of delay as also the condonation of misconduct. The learned Tribunal, fortunately, did not address itself to the right question. It is now a well-settled principle of law that validity of a charge-sheet can be questioned on a limited ground. It is also well settled that normally the court or the Tribunal does not interfere at the stage of show cause. However, once the disciplinary proceedings are over, there does not exist any bar in the way of delinquent officer to raise all contentions including ones relating to invalidity of the charge sheet. The ground upon which the correctness or otherwise of the charge-sheet can be questioned are:
>
> i) If it does not disclose any misconduct.
> ii) If it is discloses bias or pre-judgment of the guilt of the charged employee.
> iii) There is non-application of mind in issuing the charge-sheet.

iv) If it does not disclose any misconduct.
v) If it is vague
vi) If it is based on stale allegations
vii) If it is issued mala fide."

Thus the plea put forth on behalf of applicant that the impugned charge sheets issued to the applicant are vitiated for want of application of mind of the disciplinary authority is accepted. It is also the case of the applicant in OA 2977/2014 the external Investigating Agency had procured the complaint from FERA accused in the year 2000 i.e. after two years of alleged incident of January, 1998, thus the intention of the agency were not to investigate into the wrong but to make out a case to frame and nab the applicant. Such plea is not sufficient to establish the factual malafide, but the development of the facts in the way brought to fore by the applicant and the proximity point of time at which the Investigating Agency had registered two criminal cases against the applicant and made two recommendations for initiation of departmental proceeding against him certainly create a belief that the applicant was framed in the cases for some extraneous reasons arbitrarily which may also be described as legal malafide (ibid). The contention of the applicant in the said OA that he is made to pay the cost of supervising the investigation of a case in accordance with law against FERA accused can also be not ignored lightly.

48. As has been discussed hereinabove, we also find force in his contention that the allegations contained in memo of charges are not so grave that the enquiry cannot found to be vitiated on the ground of delay. The arguments put forth on behalf of applicant that charge sheet under challenge in OA no. 2976/2014 issued without consulting

the CVC was vitiated is also not without merit. Once the initial charge sheet was issued without consulting the CVC, the fresh charge sheet issued after the order of the Tribunal should have been after consultation with the Commission. The consultation with the Commission after issuance of first charge sheet would not validate the 2nd charge sheet for the simple reason that the first charge sheet had not been approved by the competent authority.

49. As has been held hereinabove, once the officers upto the level of Chairman, CVC had approved the proposal for dropping the departmental action against the applicant, the disciplinary authority should have at least referred to such material which persuaded it not to accept such proposal and in the absence of such reference, the proceedings are vitiated.

50. As far as the plea put forth on behalf of respondents that the charge sheet does not give rise to cause of action to approach the Tribunal is concerned (ibid), as has been noticed hereinabove, in **Than Singh** Vs **Union of India and Others** (CWP 3448/1998), Hon'ble Supreme Court has ruled that the charge sheet can be questioned before the Tribunal on as many as 7 grounds. Further, keeping in view the facts and circumstances of the particular case, the Tribunal can interfere with the charge sheet on the ground of delay in initiation/ conclusion of the proceedings also. In the wake, the plea raised on behalf of the respondents that charge sheet do not give rise to cause of action is rejected. It is also the argument put forth by the learned counsel that the proceedings have been initiated in view of the liberty given by the Tribunal. Once the charge sheet is interfered on technical ground, irrespective of the liberty granted to it, the

disciplinary authority may continue with the disciplinary proceedings against an employee from the stage those are interfered with.

51. In the present case, the Tribunal had given liberty to respondents to initiate the proceedings de-novo only because it intended not to permit them to continue the proceedings from the stage of which those were interfered. Such liberty cannot be interpreted by the respondents to espouse that the fresh proceedings cannot be interfered by the Tribunal. In the previous proceeding the Tribunal had adjudicated only one ground i.e. whether a charge sheet served on the delinquent not approved by the competent authority can be sustained or not. Once the fresh charge sheets have been issued to applicant, he can always question the same on the grounds available to him to do so. We are of the considered view that merely because the respondents have liberty from the Tribunal to initiate de-novo enquiry, the applicant is not debarred from challenging the same in accordance with law. The previous order was a common order in a batch of applications and no other plea, including that of delay in initiation of proceeding was examined.

<u>OA 3971/2015</u>

52. The prayer made in the OA 3971/2015 read thus:-

> ‘’(i) quash and set aside the impugned order dated 05.10.2015 (Annexure A-1);
>
> (ii) direct the respondents to promote the applicant on ad-hoc basis after completing pre-appointment formalities and place the applicant at par with his juniors in terms of OM dated 14.09.1992 and the ad-hoc promotion should be given w.e.f. due date with all consequential benefits;
>
> (iii) May also pass any further order (s), direction (s) as be deemed just and proper to meet the ends of justice.”

53. The grounds espoused by the applicant are:-

(i) In terms of order dated 28.02.2014, Hon'ble Supreme Court granted him liberty to seek the relief based on para 5 and 5.1 of the OM dated 14.09.1992.

(ii) As on date he is not under suspension and two years have elapsed from the first DPC i.e. 1.10.2005 which is condition precedent in terms of OM dated 14.09.1992.

(iii) While considering the case of applicant for promotion in accordance with para 5 and 5.1 of OM dated 14.09.1992, the authority cannot take into consideration the facts of allegation as levelled in departmental enquiry/criminal trial and the decision need to be taken on the basis of the record of service. Since the applicant was placed under suspension on 28.12.1999 which was revoked in 2014, to consider him for promotion, his service records prior to 28.12.1999 only need to be assessed.

(iii) The controversy involved in the present OA is in all four of the judgment of this Tribunal in the case of S. Ramu Vs. UOI and Others (OA 1093/2009 decided on 20.01.2010). Even when the SLP preferred against the order dated 24.02.2010 is pending before Hon'ble Supreme

Court, the respondents issued two charge sheets against him.

/

(iv). There is no likelihood of conclusion of departmental enquiry in near future and even the conclusion of criminal proceeding may also take a long time.

54. During the course of arguments, learned counsel for the applicant made a reference to the order dated 20.07.2015 passed by this Tribunal in OA no. 1286/2014 and submitted that while passing the impugned order, the respondents disregarded the said judgment of the Tribunal. Finally, he made reference to his written submissions noted in the said order.

55. In reply to OA filed by the respondents, they have espoused that the applicant is involved in criminal case arising out of RC 1/99 dated 23.12.1999, RC.1/99-EOU-IV dated 29.01.1999 and two departmental proceedings initiated vide charge sheets dated 14.03.2014 and 20.03.2014. In para 9 of the reply, the respondents have made reference to certain judicial proceedings pending before Hon'ble Supreme Court and this Tribunal and the orders therein. The para read thus:-

> "9. That it is submitted that while the applicant was suspended earlier and various proceeding in court of law/departmental proceedings got underway, the applicant challenged the same in various proceedings. Ultimately, the suspension was revoked vide order dated 06.01.2014 issued by the answering respondents with immediate effect in implementation of the judgment and order passed by the Hon'ble Supreme Court dated

> 22.11.2013 passed in C.A.No. 9454/2013. Later following the judgment and order dated 28.02.2014 passed by the Hon'ble Supreme Court in C.P (C) 116 of 2014, by subsequent order passed by the competent authority on 24.03.2014, the suspension was revoked with effect from 12.1.2012. The applicant in the meanwhile was posted to West Bengal CCA by order of CBDT No.5 of 2014 dated 10.01.2014. Although the applicant was relieved vide Office of Principal Commissioner of Income Tax order dated 16.01.2014, but the applicant submitted his joining report in the office of CCA Delhi Region on 24.01.2014 with reference to order passed by this Hon'ble Tribunal dated 20.01.2014 in OA No. 178 of 2014. Subsequently, the said OA no.178 of 2014 was allowed by judgment and order dated 22.7.2014 and it was directed that the applicant be kept in CCA Delhi on a non-sensitive post. The status of the applicant is that he has not yet been posted on any appointment since the matter is under examination with the CBDT. Thus as on date the applicant is facing two criminal trials and two departmental disciplinary proceedings."

56. In para 10 of the reply, they have stated that in view of the pendency of judicial proceeding before Hon'ble High Court, it would not be appropriate for them to comment upon the sanction granted for prosecution of the applicant. According to them, in terms of para 5 of DoP&T OM dated 14.09.1992 grant of ad hoc promotion is required to be considered by the competent authority in view of the guidelines laid down in the said OM, i.e.

a) Whether the promotion of the officer will be against public interest;
b) Whether the charges are grave enough to warrant continued denial of promotion;
c) Whether there is any likelihood of the case coming to a conclusion in the near future;
d) Whether the delay in finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adverse affect the conduct of the departmental case/criminal prosecution.

57. As has been explained by the respondents in para 12 of the reply, the applicant was considered for grant of ad hoc promotion earlier on more than one occasions in terms of OM dated 14.09.1992 and in view of the point wise information furnished by the CBI vide their letter dated 04.07.2012, he could not be given such promotion. The reply of Investigating Agency referred to in para 12 of the counter reply filed by the respondents read thus:-

> '' a. Whether the promotion of the officer will be against public interest?
>
> The promotion of the officer will be against public interest as he may use his official position to obstruct the trial of the two CBI cases (Case no. RC 6/99/EOU7 and RC 1/99-EOU4) pending against him.
>
> b. Whether the charges are grave enough to warrant continued denial of promotion?
>
> Yes, the charges are grave enough to warrant continued denial of promotion of the accused as the two criminal cases are pending against him are exemplary cases on corruption.
>
> c. Whether there is any likelihood of the case coming to the conclusion in the near future?
>
> The trial of both the cases have been stayed by the Hon'ble Supreme Court of India and at this stage no time limit can be given regarding their disposal. The conclusion of the trial will depend on the cooperation extended by the accused.
>
> d. Whether the delay in the finalization of proceedings, departmental or in the court of law is directly or indirectly attributed to the Govt. servant concerned?
>
> The accused Sh.A.K. Aggarwal has been consistently filing petitions in various courts thereby causing delay in trial of the cases.
>
> e. Whether there is any likelihood of misuse of official position which the Govt. servant may occupy after the ad hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution?

> From the past conduct of Sh.Ashok Kumar Aggarwal and facts of the two cases, there is every likelihood that in the event of his promotion at this stage, he may manage to further prolong the trial of two CBI cases against him by agitating one issue or the other on frivolous counts. As such CBI is of the considered view that his promotion at this stage is unwarranted and will adversely affect the trial of the serious CBI cases against him.
>
> The CBI had earlier recommended that in view of the comments made hereinabove, Sh. Ashok Kumar Aggarwal may not be considered for any type of promotion."

In sum and substance the plea of the respondents is that since the CBI has given negative opinion against the applicant on all the five yardsticks, he has not been given ad hoc promotion.

58. We heard counsel for parties and perused the record. Parties were given liberty to file written submissions within two weeks. Learned counsel for applicant produced detailed written arguments supported with the documents. At Annexure WS-9, he placed on record the judgment of Hon'ble High Court passed in W.P.(CRL) 1401/2002 & CRL.REV.P.338/2014. As far as two charge sheets referred to by the respondents in the reply are concerned, we have already commented upon the validity of the same. Regarding the ramification of the criminal cases pending against the applicant on his ad hoc promotion, in our dated 20.07.2015 we made reference to the written arguments submitted on behalf of applicant, a copy of which is produced by the learned counsel in these proceedings also. Various pleas espoused by the learned counsel for the applicant in this regard as articulated and summarized in the order dated 20.07.2015 read thus:-

(i). Once in the counter reply filed by the respondents copy of which was received by the applicant on 27.11.2014, they had committed that the case of the applicant for ad hoc promotion is under examination of the competent authority, there cannot be any justification for them for not finalizing the consideration/examination.

(ii). In terms of Para 4 of OM dated 14.09.1992, there should be six monthly review of the cases of Government servants whose suitability for promotion to higher grade is kept in sealed cover, thus after 27.11.2014 another review of the case of the applicant has fallen due.

(iii). In the opinion of Ministry of Law and Justice, Department of Legal Affairs, it was emphasized that the order dated 21.06.2002 and 26.11.2002 sanctioning prosecution of the applicant had been issued without application of mind. The legal opinion was subsequently withdrawn illegally.

(iv). The earlier legal opinion given by Shri D.R.Meena (Law Secretary) could be reviewed only by higher authority and not by D.R.Meena himself. In view of the judgment of Hon'ble Supreme Court, the Trial Court will have to first take a view that whether legal opinion was withdrawn legally or incorrectly.

(v). After considering the representation of petitioner, the Prime Minister's Office (PMO) vide ID Note dated 19.02.2015 advised Revenue Secretary to afford personal hearing to the petitioner and then take a decision on withdrawal of sanction orders in the two criminal cases in the light of judgment of Hon'ble Supreme Court and Law Ministry's advice.

(vi). After considering the facts of the case, the CVC issued OM dated 13.04.2015 providing that the sanction orders dated 21.06.2002 and 26.11.2002 issued by the sanctioning authority in respect of the applicant (Ashok Kumar Aggarwal) are not in conformity with the guidelines reiterated by DoP&T in Circular dated 26.03.2015, thus the administrative department i.e. Department of Revenue need to take appropriate steps to undo the irregularity, if any.

(vii). In the Circular dated 25.05.2015 issued in the light of judgment of Hon'ble Supreme Court given in the case of applicant only, it was emphasized that the non-compliance of the guidelines issued in terms of the Circular would vitiate the sanction of a prosecution, the competent sanctioning authorities should discharge their obligations with complete strictness and would be held responsible for any deviation/non-adherence and issues

questioning the validity of sanction arising at a later stage in matters of sanction for prosecution.

(viii). The CVC vide another OM dated 03.06.2015 advised Additional Secretary and CVO, Department of Revenue to follow DoP&T letter dated 26.03.2015 and CVC's circular dated 25.05.2015.

(ix). The Hon'ble Supreme Court in the judgment dated 22.11.2013 in Civil Appeal No.9454/2013 (at page 67), while revoking 14 years long suspension of the applicant, has specifically found the fact of malafide and contemptuous conduct of respondents and malice in law proved. Relevant extracts of para 24, 28, 31, 34 and 35 of the said judgment are reproduced below:-

> "24. It is astonishing that in spite of quashing of the suspension order and direction issued by the Tribunal to reinstate the respondent, his suspension was directed to be continued, though for a period of six months, subject to the outcome of the challenge of the Tribunal's order before the High Court. The High Court affirmed the judgment and order of the Tribunal dismissing the case of the appellants vide impugned judgment and order dated 17.9.2012. Even then the authorities did not consider it proper the revoke the suspension order.
>
> xxx xxx
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> 28. In view of the above, the aforesaid order dated 31.7.2012 in our humble opinion is nothing but a nullity being in contravention of the final order of the Tribunal which had attained finality. More so, the issue could not have been re-agitated by virtue of the application of the doctrine of res judicata.
>
> xxx xxx
>
> 31. In view of above, we are of considered opinion that it was not permissible for the appellants to consider the renewal of the suspension order to pass a fresh order without challenging the order of the Tribunal dated 1.06. 2012 and such an attitude tantamounts to contempt of Court and arbitrariness as it is not permissible for the executives to scrutinize the order of the court.
>
> xxx xxx
>
> 34. The aforesaid facts make it crystal clear that it is a clear cut case of Legal malice.
>
> 35. The record of the case reveals that this Court has granted interim order dated 8.10.2012 staying the operation of the judgment and order dated 1.6.2012 but that would not absolve the appellants from passing an illegal, unwarranted and uncalled

for order of renewal of suspension on 31.7.2012 and if that order was void, we are very much doubtful about the sanctity/validity of the orders passed on 21.1.2013 and 17.7.2013. It further creates doubt whether the appellants, who had acted such unreasonably or illegally, are entitled for any relief before this Court. The Tribunal and the High Court were right that the appellants had not followed the directions of the Tribunal issued on 16.12.2011 and the mandate of Department's OM dated 7.1.2004. There is no gainsaid in saying that the terms of the said O.M were required to be observed."

(x). This Tribunal vide judgment dated 22.07.2014 quashed and set aside the transfer order dated 10.01.2014 being illegal and in violation of the Transfer Policy Guidelines, 2010. The relevant excerpts of the same are reproduced below:-

"Thus, once this Tribunal found no justification of continuance of the applicant under suspension and directed the respondents to revoke his suspension and the said order was upheld right upto the Hon'ble Supreme Court, now the respondents cannot say that the transfer of the applicant is necessary to serve public interest on account of pendency of the criminal case against him. Para 42 of the order passed by the Honble Supreme Court dismissing the appeal reads as under:-

"42. Considering the case in totality, we are of the view that the appellants have acted in contravention of the final order passed by the Tribunal dated 1.6.2012 and therefore, there was no occasion for the appellants for passing the order dated 31.7.2012 or any subsequent order. The orders passed by the appellants had been in contravention of not only of the order of the court but also to the office memorandum and statutory rules.

In view thereof, we do not find any force in this appeal. The appeals lacks merit and is accordingly dismissed. There will be no order as to costs."

Even otherwise also, once a criminal trial is pending against the applicant and the Hon'ble Supreme Court has viewed that the same should be concluded at the earliest and as per requirement of the criminal procedure, the applicant need to participate in the said trial, on his transfer to CCA Kolkata, he will have to take leave frequently to

participate in the trial. Thus for this reason also, the transfer of the applicant cannot be considered either in the interest of administration or in public interest. Rather, it would be against the public interest to transfer the applicant to a place from where he will have to move to Delhi frequently to attend the trial. It is not the case of the respondents that the applicant who is facing a criminal trial involving the allegation of forgery of documents and possessing disproportionate assets is required to take charge of such responsibility in CCA Kolkata, which no other officer can take. As can be seen from the aforementioned letter of the MHA where continuance in office of the Government servant is likely to prejudice the investigation, trial or inquiry and there is apprehension of tampering with witnesses or documents, he may be placed under suspension. Thus, when Hon'ble Supreme Court is of the view that the applicant needs not to be continued under suspension, it cannot be viewed by the respondents that there is apprehension of tampering the witnesses and documents by him. The submission of the learned counsel for applicant that the transfer order dated 10.01.2014 passed within four days of reinstatement of the applicant, pursuant to the final order passed by Hon'ble Supreme Court, amounts to an attempt by the department to demonstrate that if a person succeeds in getting relief against it in one matter, it has other arms to subject him to persecution can also be not termed as without merits. The transfer of the applicant would also defeat the direction of the Hon'ble Supreme Court issued for expedition conclusion of the trial of the criminal case pending against the applicant.

23. In view of the aforementioned, the plea of respondents that the impugned orders have been issued on administrative grounds in public interest cannot be accepted. Thus, the impugned orders F.No.A-22012/1/2013-Ad.VI dated 10.01.2014 and F.No.P-328/Relieving/ Jt. CIT/ CCIT (CCA) / 2013-14 / 4791 (Annexure A-1 Colly) dated 16.01.2014 are quashed. The OA is allowed. The respondents would keep the applicant posted in CCA Delhi on a non- sensitive post. No cost.

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In view of the above order passed in the OA, it is made clear that for the intervening period, the applicant would be treated as posted in CCA Delhi

with all consequential benefits including salary from 10.1.2014."

(xi). Despite the above judgment, the respondents neither paid the salary to the applicant from 10.01.2014 onwards nor posted him in Delhi. After waiting for 5 months, the respondents moved Civil Petition No. 9305/2014 before Hon'ble High Court of Delhi and obtained an ex parte order on 24.12.2014 by making false statement that the Special Review Committee had earlier recommended vide minutes dated 24.07.2014 that the applicant should be posted on a non-sensitive post 'elsewhere'. This was a fraud played on the Hon'ble High Court in order to procure a favourable order. Further, in the said petition, the respondents falsely stated that the applicant, after having lost two cases in Hon'ble Delhi High Court, had filed two SLPs in Hon'ble Supreme Court which were also dismissed by Hon'ble Supreme Court passing serious strictures against the applicant. In fact, it was CBI which had lost its two cases in Hon'ble Court and thereafter, CBI had challenged the said two orders by filing two SLPs (Criminal) Nos. 7266/2007 and 7601/2007 which were dismissed by Hon'ble Supreme Court passing serious strictures against the conduct of CBI stating that CBI had suppressed material facts of the case in their SLP and played hide and seek with the courts causing serious prejudice to the applicant. Perturbed with the contemptuous conduct and falsehood of the respondents, the applicant moved two applications viz.CM No. 234/2015 for vacation of stay and CM No. 337/2015 for initiation of perjury proceedings u/s 340 Cr.P.C. against the respondents. Hon'ble Division Bench of the High Court vide order dated 09.01.2015 held that the Special Review Committee never recommended the transfer of the applicant on a non-sensitive post 'elsewhere' and directed that the relieving order dated 06.01.2015 of the applicant shall not be given any effect and adjourned the matter to 12.01.2015. A copy of the order dated 09.01.2015 passed by Hon'ble High Court is annexed as Annexure Rej-2 at page 46-48 of the rejoinder affidavit. Apprehending that Hon'ble High Court may take action for perjury and initiate contempt proceedings against them, the respondents immediately withdrew their petition on 12.01.2015. The following are the extracts of the final order passed by Hon'ble High Court on 12.01.2015 while dismissing the aforementioned petition:

"Mr. Shankar Raju, on instructions from the petitioner No. 2-Centrral Board of Direct Taxes, seeks to withdraw the present petition. Counsel further submits that the petitioner No. 2 has taken a decision to post the respondent on some non-

sensitive post in Delhi for his tenure as per the transfer policy.

Mr. Rakesh Khanna, Sr. Advocate appearing for the respondent, on the other hand, submits that he has instructions to press Crl. MA No.337/2015 moved under section 340Cr. P.C. for the time being. Counsel further submits that in future if any kind of vindictive action is taken by the petitioners against the respondent then the respondents may take the help of the averments made in the petition to reflect the conduct of the petitioners.

The writ petition and all the pending applications are accordingly dismissed as withdrawn. Let the respondent be accordingly posted to some non-sensitive post in Delhi under the relevant guidelines."

(xii). For the purpose of making a reference to Ministry of Law and Justice, a 'Self Contained Note' was prepared as directed by Additional Secretary-cum-CVO, Department of Revenue with cross reference to documents which were approved by the officers of the Department including Additional Secretary-cum-CVO (p.376 to 382/c Vol.II). The relevant extracts of para 16, 17, 24 and 26 of the said self contained note are reproduced below:

"16. Meanwhile, another letter dated 18.6.2002 (pp.302-303-321/) was received from CVC annexing therewith a copy of a d.o letter dated 6.6.2002 from CBI Director and seeking comments of the Department on the various points/issues agitated by the CBI Director. CVC referred to the anguish expressed by CBI Director for entertaining the representations of Shri Aggarwal. CBI Director insisted that a decision with regard to grant of sanction needs be taken only in the light of all facts and evidence set out in the S.P's report and this report did not leave any scope for entertaining representations from the accused.

17. Since the time limit of two months was expiring on 21.6.2002, a decision was taken to grant sanction of prosecution against Shri Aggarwal on the basis of S.P's report only as desired by CBI Director and CVC, Investigation record of the case were, however, not made available to the Department as agreed to by CBI in the Hon'ble High Court of Delhi and as reflected in the order dated 9.4.2002 referred to in para 8 above for perusal and satisfaction of the sanctioning authority.

24. It is not clear as to how CBI, the apex investigating agency, did not consider it appropriate to, include such a vital information received in response to Letter Rogatory in the S.P's report while seeking grant of sanction for prosecution. The reply received by CBI on 30.07.2001 in response to Letter Rogatory brings out clearly that the alleged fax dated 23.12.1997 was a genuine one.

26. From the foregoing, it is clear that had the CBI included the vital and established information received on 30.07.2001 in response to Letter Rogatory in the S.P's report dated 30.10.2001, the allegation made by Shri Abhishek Verma of forgery of fax and subsequent conspiracy for financial consideration as well as other allegations for financial consideration as well as other allegations against Shri Aggarwal would have not met the litmus test. It is also apparent that there might have been hardly any reason for the sanctioning authority to grant sanction for prosecution in the light of such established facts, as such a sanction would not have been in conformity with the principles laid down by the Hon'ble Supreme Court in their judgment relied upon by the CBI in their letter dated 10.09.2002 and referred to in para 21 above."

Though while attempting such a self-contained note for M/o Law & Justice, primarily the Department was of the view that there was no case against Shri Aggarwal yet the sanction for prosecution was accorded by the sanctioning authority. However, as decided by the then Rev. Secy., no such reference was made to Ministry of Law & Justice for legal opinion at that time (P.56/N ante).

(xiii). In another matter RC S19/ 1999/E 0006 dated 7.12.1999, regarding alleged disproportionate assets in possession of Shri Aggarwal, sanction has also been accorded on 26.11.2002 only on the basis of the SP's report 24.5.2002 i.e. without considering and examining the relevant material which was not sent by the CBI. No material was sent by the CBI along with the S.P's report or any time later. However, the sanction order contains an incorrect declaration that the sanction had been accorded only after considering and examining the entire record of investigation and documents including statements of witnesses. The counsel for prosecution before the Trial Court fairly conceded on 11.7.2007 that only SP's report along with the list of the documents and witnesses had been sent to the sanctioning authority. Hon'ble Delhi High Court in Crl. Revision Petition

No.589 of 2007 filed by Shri Aggarwal conclusively held in its order dated 03.10.2007 that before according the sanction, the sanctioning authority had not considered the entire material since the same was never sent by the CBI and the declaration in the aforesaid sanction order that before according sanction the relied upon material had been considered and examined by the sanctioning authority, is incorrect.

(xiv). The Hon'ble Supreme Court while dismissing appeal of CBI in Criminal Appeal No.1837/2013 upheld the order dated 20.08.2007 of Hon'ble High Court of Delhi whereby the status to approver granted to notorious FERA accused Abhishek Verma had been quashed in case RXC No.SI8/E0001/1999 dated 29.01.1999, passed adverse findings against CBI and Abhishek Verma, co-accused in the case. The judgment is Annexure Rej-II at pages 82-110. Relevant extracts of para 24, 27 & 28 are reproduced below:-

> "24. The other facts which could also be taken note of are the correspondence between the Judicial Authority of Switzerland and the CBI as well as the communications, particularly reply to the letter Rogatory sent by the Indian Authorities, letter dated 13.1.998 sent by S.C. Barjatya to the Swiss Bank, letter dated 4.2.1998 sent by Manju Barjatya, wife of S.C. Barjatya to Swiss Bank Corporation and contradictory statements in the complaint dated 4.1.1998 by S.C. Barjatya and the FIR dated 29.1.1999. The Court may also note of the statutory provisions of Section 166 A Cr.P.C etc. and further correspondence between different departments on the issue of sanction for prosecution of the respondent.
>
> 27. .....While passing the impugned judgment and considering the fact that the material required to be considered had not even been placed before the Court while disposing of the application for grant of pardon and the manner in which the application had been dealt with as Respondent No.2 and the present appellant had been playing hide and seek with the Court and in spite of the fact that the Court had asked the appellant to disclose the criminal cases against Respondent No.2, no information was furnished to the Court, e are of the considered opinion that in the facts and circumstances of the case, substantial justice should not be defeated on mere technicalities.

> 28. In view of the above, we do not find any cogent reason to interfere with the impugned judgment and order. The appeal lacks merit and is accordingly dismissed. Interim order passed earlier stands vacated."

59. A direction was given to respondents to finalise the consideration of applicant for ad hoc promotion, keeping in view the factual position and the contention brought to fore by the parties in their pleadings as well as written arguments (ibid). After the said order passed by this Tribunal, the respondents issued impugned order F.No.C-18011/33/2014-Ad-VI dated 05.10.2015. In the said order, reference has been made two criminal cases and two charge sheets. Relevant excerpts of the order read thus:-

> "**Whereas**, para 5 the DOP&T OM No. 22011/4/1991-Estt.(A) dated 14.09.1992 that has been referred to in the representations dated 04.03.2014 and 31.07.2015 of Shri Ashok Kumar Aggarwal read as under:-
>
> > "In spite of the six monthly review referred to in Para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-
> >
> > I) Whether the promotion of the officer will be against public interest;
> > II) Whether the charges are grave enough to warrant continued denial of promotion;
> > III) Whether there is any likelihood of the case coming to a conclusion in the near future;
> > IV) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and

V) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau."

Whereas, vide letter No. 777/3/6/99/EOU-VII/EO-III/N,Delhi dated 29.01.2015, the CBI has commented that Shri Ashok Aggarwal has been consistently filing petitions in courts in order to cause inordinate delay in trial of the two CBI cases against him, i.e. case RC: 06/1999/EOU-IV and RC: 1/1999-EOU-IV. The CBI has further commented that the charges against him in the said two cases are grave in nature as relating to possession of huge disproportionate assessts in one case and fabricating false evidence, forgery and criminal misconduct etc., while holding high official position in the other case.

Therefore, considering facts of the case, gravity of charges of mis-conduct by way of forgery, demand of illegal gratification, abuse of official position, failure to main integrity & confidentiality and also the provisions of the DOP&T OM 22011/4/1992-Estt (A) dated 14.09.1992, the Competent Authority has decided that request of Shri Ashok Kumar Aggarwal for his promotion on Ad-hoc basis to the grade of Commissioner of Income Tax (CIT) at par his junior cannot be acceded to. The representation dated 32.07.2015 of Shri Ashok Kumar Aggarwal is disposed of accordingly."

60. As can be seen from the order, the respondents had nixed ad hoc promotion for the applicant on two grounds viz;

(i) that applicant had been consistently filing petitions in the Court in order to cause inordinate delay in trial of two CBI cases against him, i.e. case RC: 06/1999/EOU-IV and RC: 1/1999-EOU-IV and

(ii) the charges against him in that two cases are grave in nature as they relate to the possession of huge disproportionate assets and fabricating false evidence, forgery and criminal misconduct etc.

61. As far as the first point is concerned, the delay inclusion of criminal/disciplinary proceedings can be attributed to an employee only when he does not cooperate/participate in the proceedings. The availing of legal remedies available before judicial forum cannot be held against the individual employee as an attribution of delay by him.

62. In the present case, once the applicant challenged the validity of the order dated 28.07.2007 whereby the application filed by him questioning the prosecution sanction was rejected before Hon'ble High Court by filing Revision Application under Sections 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973 successfully and the challenge to order of Hon'ble High Court before Hon'ble Hon'ble Supreme Court by CBI in Criminal Appeal no. 1838/2013 filed by CBI failed, it cannot be said that the applicant caused delay in conclusion of the proceedings. In fact, he genuinely and bonafidely availed the legal remedies before Hon'ble High Court successfully and if institution of judicial proceeding can be considered as an act of causing delay in conclusion of the proceedings, the CBI also so acted by filing Criminal Appeal no. 1837/2013 questioning the order of Hon'ble High Court in Crl. Misc. (Main) no. 3741/2001 whereby it reversed the order of Special Court granting pardon to Mr. Abhishek Verma. Further, under no circumstances, institution of

judicial proceedings to avail the legal remedies can be considered as an act of causing delay in conclusion of the criminal proceedings in terms of the yardstick laid down in para 5 of OM dated 14.09.1992. Similarly, the filing of Writ Petition (Criminal) no. 1401/2002 against the order of sanction for prosecution in case RC No. S18/EOOO1/1999 dated 29.01.1999 wherein the CBI had given an undertaking cannot be called as an act of delaying the criminal proceedings. The filing of the petition is an act to avail the judicial remedies. Applicant filed Criminal Rev.Petition no. 338/2014 in case RC no. S19/EOOO6/1999 dated 07.12.1999 questioning the sanction of the prosecution. The pendency of proceedings can only be explanation for delay. The W.P. (Crl.) No.1401/2002 and Crl. Rev. P. No.338/2014 have been allowed by the Hon'ble High Court vide judgment dated 13.01.2016. In the said judgment, sanctions of the prosecution in two criminals cases have been quashed. Relevant excerpt of the said judgment reads thus:-

> "2. According to the petitioner, the genesis of the present litigation is the disagreement between him and his immediate superior qua the discharge of the former's official duties, which were of a sensitive nature. The present is a manifestation of how the career of an IRS Officer has been blighted by litigation between him on the one hand and the official respondent s on the other. The present is the umpteenth round of litigation between the parties arising out of the subject RCs.
>
> 3. At the very outset it is noticed that as a consequence of the registration of the subject RCs, the petitioner was placed under suspension which was renewed from time to time for a period of over 14 years during the pendency of a Disciplinary Enquiry. The suspension was finally revoked and set aside by the Hon'ble Supreme Court of India vide order dated 22.11.2013 rendered in Civil Appeal No. 9454/2013, as elaborated hereinafter. The Supreme Court, returned a finding that the

proceedings against the petitioner suffered from the vice of legal malice. It is further noticed that when the Supreme Court passed the afore-stated judgment and order dated 22.11.2013, a period of 9 years remained for the petitioner to attain the age of superannuation. Currently, only 6 years remain till the petitioner reaches the age of superannuation. The petitioner was also arrested on two occasions namely, 23.12.1999 and 09.12.2000 in relation to the subject RCs. The gravity of the charges is also more reiterated by the fact that once Secretary (Law) could give an opinion that no case for sanction of the prosecution was made out, though subsequently he withdrew such opinion.

xx xx xx xx

78. Resultantly, in view of the decisions of the Supreme Court in M.M. Rajendran (supra), State of Karnataka vs. Ameerjan (supra), CBI v. Ashok Kumar Aggarwal (supra), and in view of para 22.16 of the CBI Manual, the sanction order dated 26.11.2002 is rendered invalid.

79. The Special Judge in its order dated 24.05.2014 lost sight of the established position of law that if the entire material of investigation is not sent to the sanctioning authority, the consequent sanction order becomes invalid on account of non-application of mind by the sanctioning authority. As observed above, a valid sanction is a sine qua non for initiating proceedings under POCA against a public officer. The Special Judge, CBI misdirected himself by taking recourse to section 19(3) POCA. The Special Judge overlooked the mandate that an order is bad in law if it is based on irrelevant material, or if it has failed to consider relevant material. And owing to the fact that the relevant material, (in the instant case, the entire material collected during investigation) was not placed before the Sanctioning Authority, the sanction order dated 26.11.2002 is invalid and the proceedings before the Special Judge are vitiated for want of a valid sanction as per the provisions of section 19(1) POCA.

80. In view of the foregoing, the issue raised in Criminal Revision Petition No. 338/2014 regarding the validity of the sanction order dated 26.11.2002 is invalid, void ab-initio and non-est. Consequently, the order of the Special Judge (CBI) dated 24.05.2014, impugned herein, is set aside and quashed.

81. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by the CBI under the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as 'the DSPE Act'), the same principles apply and the CBI as a premier

investigating agency is supposed to discharge its responsibility with competence, promptness, fairness, uninfluenced and unhindered by external influences. (Reference: Manohar Lal Sharma vs. Principal Secretary, reported as (2014) 2 SCC 532).

82. Reference can be made to the decision of the Hon'ble Supreme Court in P. Sirajuddin vs. State of Madras reported as 1970 SCC (CRI) 240 wherein it was observed as under:-

> "17. ... Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general."

83. In Manohar Lal Sharma (supra) an affidavit was filed on behalf of the Central Government elaborating its stand that the power of supervision for investigation to be conducted by the CBI has been shifted from the Government to the CVC.

84. The above stand of the Central Government is in keeping with the mandate of the provisions of Section 8 of the CVC Act, 2003 (hereinafter referred to as 'the CVC Act') stipulates that the Commission shall exercise superintendence over the functioning of the DSPE Act insofar as it relates to the investigation of offences alleged to have been committed under the POCA or an offence with which a public servant specified in sub-Section 2 of Section 8 of the CVC Act may under the Code be charged at the same trial. The provision further stipulates that the commission shall give directions to the CBI for the purpose of discharging the responsibilities entrusted to the former under the provisions of Section 4 of the DSPE Act. Despite that the opinion of the CVC that the sanction orders dated 21.06.2002 and 26.11.2002 were invalid, has been ignored and overridden by the official respondents.

85. In Manohar Lal (supra) the CBI reiterated that the sole purpose for its seeking powers beyond what had been granted at this stage was to make the Director more empowered and ensure a more professional, efficient, expeditious and impartial conduct of CBI investigations in sync with its motto "industry, impartiality and integrity" and also to ensure the highest levels of disciplinary and ethical conduct by CBI personnel.

86. In Adesh Kumar Gupta vs. CBI in Writ Petition (Criminal) No.725/2015 decided on 02.09.2015 this court alluded to the luminous observations of the United States Supreme Court in Viteralli v. Seton, 359 U.S. 535: 3L.Ed. 1012 which was echoed in the landmark decision of the Hon'ble Supreme Court of India in R.D. Shetty vs. International Airport Authority of India and Ors., reported as AIR 1979 SC 1628 that an executive agency must be rigorously held to the standards by which it professes its action to be judged.

87. In Adesh Kumar Gupta (supra) this Court further observed in para 20 of the report that "It requires no reiteration that observance of due process of law is fundamental in the effective functioning of the executive machinery. The Supreme Court, since 1950, in the celebrated decision in A.K. Gopalan vs. State of Madras, reported as AIR 1950 SC 27 has emphasized and reemphasized the importance of following due process. The CBI is a premier investigating agency professing high standards of professional integrity and must be held strictly to those standards."

88. In Zahira Habibulla H. Sheikh and Another vs. State of Gujarat and Others reported as (2004) 4 SCC 158 the Hon'ble Supreme Court considered how justice itself can become a victim if the investigation is not fair. The Court in paragraph 18 of the report expressed thus:-

> "18. ..... When the investigating agency helps the accused, the witnesses are threatened to depose falsely and the prosecutor acts in a manner as if he was defending the accused, and the court was acting merely as an onlooker and when there is no fair trial at all, justice becomes the victim."

89. In State of Haryana vs.Bhajan Lal, reported as 1992 Supp (1) SCC 335, the Supreme Court listed numerous categories where the High Court is entitled to exercise its extraordinary powers under Article 226 of the Constitution of India or inherent power under section 482 of the Code to secure the ends of justice and to prevent abuse of process of any court. One of the numerous categories listed by the Supreme Court reads as follows:

> “(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

90. In this background, I am compelled to comment on the manner in which the investigation in the subject case has been carried out. The investigation smacks of intentional mischief to misdirect the investigation as well as withhold

material evidence which would exonerate the petitioner. These proceedings asseverate to be a glaring case of suggestion falsi, suppresio veri (Suppression of the truth is [equivalent to] the expression of what is false), and hence mala fide. It does not seem to be merely a case of faulty investigation but is seemingly an investigation coloured with motivation or an attempt to ensure that certain persons can go scot free. (Ref: Dayal Singh & Ors vs. State of Uttranchal, reported as (2012) 8 SCC 263). The above conclusion can be gathered from the following facts:

a) In view of the backdrop that the subject criminal cases came to be registered only after representations were sent by the petitioner against his seniors to the Revenue Secretary, and clarification was sought by the Revenue Secretary from those seniors.

b) Mr. Barjatya, whose premises were raided on 01.01.1998 and a debit advice from the Swiss Bank was recovered from his Fax machine, was not prosecuted at all for the reasons best known to the CBI.

c) Furthermore, the CBI relied upon the documents provided by Mr. Mandeep Kapur, Chartered Accountant of Mr. Barjatya obtained from Mr. Eric Huggenberger, attorney of the Swiss Bank Corporation, to prove a case against the petitioner, who had conducted the said raid. In the reply to LR dated 27.06.2001, the Swiss Bank Corporation did not confirm the authenticity of the above-mentioned letter. The CBI did not further inquire into the same. Such a procedure of investigation is unheard of and gives rise to a reasonable suspicion with respect to the intentions of the investigating agency.

d) The conduct of the CBI brings to mind a paraphrase of the often quoted aphorism by George Orwell:

> "All [men] are equal, but some are more equal than the others."
>
> -George Orwell, Animal Farm

e) The Swiss Bank Corporation in its Reply to the LR dated 27.06.2001 had asked for further details of Mr. Barjatya and other persons named in the LR, like date of birth, address, etc. to verify if they operate any account in the former bank. That was not done for reasons best known to the official respondents. The reply to the LR dated 27.06.2001 also did not confirm about the genuineness of the letter obtained by Mr. Mandeep Kapur, Chartered Accountant of Mr. Barjatya from Mr. Eric Huggenberger, attorney of the Swiss Bank

Corporation. The CBI made no further inquiries in relation to any account of Mr. Barjatya in the Swiss Bank Corporation, nor did it confirm the genuineness of the afore-stated letter obtained by Mr. Mandeep Kapur, Chartered Accountant.

f) It is noticed that the CBI had sent a letter to the Law Secretary vide D.O. No.8298/3/1/99(Pt file)/2011/UW IV dated 05.08.2011 wherein he was asked to reconsider his opinion dated 05.04.2011, and it is only after this that the former withdrew his opinion without following proper procedure as is evident from the letter of Ministry of Law & Justice bearing reference F.No.31/2/2014-Vig dated 31.03.2014.

g) As has been observed above, the investigating agency also did not send the Reply to LR dated 27.06.2001 and the relevant Fax from the Swiss Bank dated 13.01.1998 sent to Mr. Barjatya. These documents clearly establish that the Fax in question was a genuine fax and establish the innocence of the petitioner qua the charges of fabricating the Fax in question.

h) The investigation record in RC No.SI9 E0006 1999 was not sent to the sanctioning authority before it granted the sanction dated 26.11.2002. The act of not placing relevant material before the sanctioning authority itself amounts to mala-fide.

i) The entire case of the CBI rested on the testimony of Mr. Abhishek Verma, the approver in the instant case, who vide his application dated 31.07.2014 had retracted his statement and stated that he had made the earlier statement under coercion and threat from the Investigating Officer in the instant case. The testimony of Mr. Abhishek Verma as opined by the learned Special Judge vide its order on approver dated 07.09.2001 is the basis of the allegations against the petitioner in RC No.SI8 E0001 1999. The official respondents themselves later assert that Mr. Abhishek Verma has criminal antecedents and is admittedly not creditworthy.

j) The opinion of the CVC dated 13.04.2015 were also not acted upon promptly by the CBI, despite the CVC being the supervising body for the CBI.

k) It is further noticed from the order of the CAT dated 16.12.2011 that the respondents have continuously opposed the application for the revocation of the suspension of the petitioner from service.

l) The opinion of Ministry of Law and Justice dated 05.04.2011 was also revoked consequent to a letter by the CBI vide D.O. No. 8298/3/1/99(Pt file)/2011/UW IV dated 05.08.2011 to the Law Secretary, requesting him to reconsider his opinion.

91. In view of the foregoing, the substratum and the gravamen of the Charge against the petitioner in R.C. No.SI8 E 00011999 founders is denuded and without any substance whatsoever.

92. A couplet by Kaif Bhopali is apposite:

"Janab-e-'kaif' yeh Dilli hai 'Mir' o 'Ghalib' ki, Yahan Kisi Ki Taraf-dariyan Nahin Chaltin."

-Kaif Bhopali

93. Accordingly, the present petitions are allowed. No costs.

94. The orders granting sanction dated 21.06.2002 and 26.11.2002 passed by the Competent Authority, Department of Revenue, Ministry of Finance, Government of India; the Charge Sheet in RC No.SI8 E0001 1999 submitted by the CBI in the Court of the Special Judge, CBI, Delhi dated 28.06.2002; the order on charge dated 17.12.2005 in R.C. No.SI8 E0001 1999 in CC No.26 of 2002 passed by the Special Judge, CBI, Delhi; and the order of the Special Judge, CBI dated 24.05.2014 in RC No. SI9 E0006 1999 in CC No. 55/02 are hereby set aside and quashed. All the pending applications also stand disposed of.

95. The original records have been perused and the same be sealed and returned to the Department of Revenue, Ministry of Finance.

96. The petitioner has suffered great prejudice since 1998 on account of the prolonged litigation between him and the official respondents. He has endured suffering, humiliation and considerable trauma. A sense of dubiety has persisted qua the petitioner since long which reminds one of the lyrics in the famous song by Bob Dylan:

"How many roads must a man walk down
Before you call him a man?"

97. Normally, the case would have been remitted back to the sanctioning authority for reconsideration on a fresh order of sanction. However, in the circumstance that the instant case commenced as far back as in 1998 and eighteen years have since lapsed; and in the light of the decision of the Supreme Court in Mansukhlal Vithaldas Chauhan vs. State of Gujarat (supra), in my opinion it would be unfair, unjust and contrary to the interests of justice to expose the petitioner

> to another round of litigation and keep him on trial for an indefinitely long period. It would also offend the principle enshrined in the provisions of Article 21 of the Constitution of India. A quietus must be applied to the present proceedings. Thus, in the interest of justice, finality is given to these proceedings and it is directed that no further proceedings in relation to the subject sanction orders be initiated against the petitioner."
>
> -Emphasis supplied

63. During the hearing of OA 1286/2014 it was also brought out that after considering the representation of the applicant, the Hon'ble Prime Minister's office (PMO) vide ID note dated 19.02.2015 advised Revenue Secretary to afford personal hearing to applicant while taking a decision on withdrawal of sanction order and after considering the facts of the case the CVC issued OM dated 13.04.2015 providing that the sanction orders dated 21.06.2002 and 26.11.2002 issued by the sanctioning authority in respect of the applicant were not in conformity with the guidelines reiterated by DoP&T in Circular dated 26.03.2005. In Circular dated 25.05.2015 issued in the light of the judgment of Hon'ble Supreme Court in the case of applicant only it was emphasized that non-compliance of the guidelines issued in terms of the Circular would vitiate the sanction of the prosecution and the sanctioning authority should discharge its obligation with complete strictness failing which it can be held responsible for any deviation/non-adherence. The CVC vide another OM dated 03.06.2015 advised Additional Secretary and CVBO, Department of Revenue to follow DoP&T letter dated 26.03.2005 and CVC's circular dated 25.05.2015. Once in the two criminal cases (ibid), relied upon by the respondents, to deny promotion to applicant, Hon'ble High Court of Delhi has quashed the sanction of the prosecution and the charge sheets in disciplinary cases, so relied upon by him, have not

been found sustainable by us, there can be no reason to deny promotions to the applicant, thus the respondents should consider the applicant for all such promotions as granted to his immediate junior, with all consequential benefits. For such promotion, he should be considered on the basis of ACRs available till 1999 when he was placed under suspension and with due regard to the law declared by the Hon'ble Supreme Court in **Abhijeet Dastidar Dastidar** Vs. **Union of India & others** (Civil Appeal No.6227/2008) decided on 22.10.2008. Relevant excerpt of the said judgment reads thus:-

> "4) It is not in dispute that the CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.09.1997 and the order of adverse remarks dated 09.06.1998. In view of the said order, one obstacle relating to his promotion goes. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.
>
> 5) Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group-A, but his retrospective promotion from 28.08.2000 shall be considered for the benefit of re-fixation of his pension and other retrial benefits as per rules.
>
> 6) The appeal is allowed to the above extent. No costs."

64. Recently, in the case of **Sukhdev Singh** v. **Union of India & others** (Civil Appeal No.5892/2006) decided on 23.4.2013 the aforementioned order is reiterated. Relevant excerpt of said judgment reads thus:

> "7. A three Judge Bench of this Court in Abhijit Ghosh Dastidar vs. Union of India and others followed Dev Dutt. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:
>
> > "Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non- communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the
>
> > appellant had ever been informed of the nature of the grading given to him."
>
> 8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very

good - must be communicated to him/her within a reasonable period.

9. The decisions of this Court in Satya Narain Shukla vs. Union of India and others and K.M. Mishra vs. Central Bank of India and others 11 and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.

11. Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

11 I.A. No. 3 of 2011 for intervention is rejected. It will be open to the applicant to pursue his legal remedy in accordance with law."

65. As has been viewed by Hon'ble High Court of Delhi (supra), now the stage has arrived at where there should be an end to the woods of litigation for the applicant.

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in OA 1286/2014

66. In implementation of the order dated 24.07.2015 passed by this Tribunal in OA 1286/2014, the respondents have passed order no.C-18011/33/2014-Ad-VI dated 5.10.2015. Learned counsel for respondents relied upon the judgment of Apex Court in **J.S. Parihar** v. **Ganpat Duggar & others** (Civil Appeal Nos. 12494-96/1996) decided on 11.09.1996 to espouse that in the wake of aforementioned decision taken by the respondents, the Contempt Petition does not lie. Once in implementation of the directions given by the Courts/Tribunal to the authorities to take their own decision, the decision is taken, whosoever wrong the decision may be, they cannot be found to have wilfully disobeyed the order of the Court/Tribunal.

Such is the view taken by Hon'ble Supreme Court in **Bihar State Govt. Sec. School Teachers Association** Vs. **Ashok Kumar Sinha & others** (Contempt Petition (C) Nos.88-89 of 2013 in Civil Appeal Nos.8226-8227 of 2012) decided on 7.5.2014. Relevant excerpt of the said judgment reads as under:-

> "15. Mr. Rao referred to the following judgments:
>
> J.S. Parihar v. Ganpat Duggar and others, [1996 (6) SCC 291]
>
> > "6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an

appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench."

Indian Airports Employees Union v. Ranjan Chatterjee and Another, [(1999) 2 SCC 537]

"7. It is well settled that disobedience of orders of the court, in order to amount to 'civil contempt' under Section 2(b) of the Contempt of Courts Act, 1971 must be 'willful' and proof of mere disobedience is not sufficient (S.S. Roy v. State of Orissa). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar).

8. In this contempt case, we do not propose to decide whether these six sweepers do fall within the scope of the notification dated 9-12-1976 or the judgment of this Court dated 11-4-1997. That is a question to be decided in appropriate proceedings.

9. It is true that these six sweepers' names are shown in the annexure to WP No. 2362 of 1990 in the High Court. But the question is whether there is wilful disobedience of the orders of this Court. In the counter-affidavit of the respondents, it is stated that there is no specific direction in the judgment of this Court for absorption of these sweepers, if any, working in the car-park area, and that the directions given in the judgment were in relation to the sweepers working at the International Airport, National Airport Cargo Complex and Import Warehouse. It is stated that the cleaners employed by the licensee in charge of maintenance of the car-park area do not, on a proper interpretation of the order, come within the sweep of these directions. It is contended that even assuming that they were included in the category of sweepers working at the International Airport, inasmuch as they were not employed for the purpose of cleaning, dusting and watching the buildings, as mentioned in the notification abolishing contract labour, they were not covered by the judgment. It is also contended that the case of such sweepers at the car-park area was not even referred to the Advisory Board under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and it was highly doubtful if they were covered by the notification.

10. On the other hand, learned Senior Counsel for the petitioners contended that going by the map of the Airport, it was clear that these sweepers at the car-park area were clearly covered by the notification and the judgment. The fact that the names of these six employees were shown in the annexures to the writ petition was

proof that they were covered by the judgment. The licensee is in the position of a contractor.

11. In our view, these rival contentions involve an interpretation of the order of this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers was bona fide and was based on an interpretation of the above orders and the notification etc. and cannot be said to amount to 'wilful disobedience' of the orders of this Court."

All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi and others, [(2009) 5 SCC 417]

"78. We may now notice some judgments in which the courts have considered the question relating to burden of proof in contempt cases. In Bramblevale Ltd., Re Lord Denning observed: (All ER pp. 1063 H-1064 B)

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.
>
> Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

79. In Mrityunjoy Das v. Sayed Hasibur Rahaman the Court referred to a number of judicial precedents including the observations made by Lord Denning in Bramblevale Ltd., Re and held: (SCC p. 746, para 14)

> "The common English phrase 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt."

80. In Chhotu Ram v. Urvashi Gulati a two-Judge Bench observed: (SCC p. 532, para 2)

> "2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

81. In Anil Ratan Sarkar v. Hirak Ghosh the Court referred to Chhotu Ram v. Urvashi Gulati and observed: (SCC p. 29, para 13) "The Contempt of Courts Act, 1971 has been introduced in the statute book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country" undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute."

xx xx xx xx

19. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these Contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance of the directions given in the judgment, this Court is not supposed to go into the nitty gritty of the various measures taken by the Respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are

> implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of C.A. No. 8226-8227 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres."

In view of the abovementioned, no wilful disobedience of the order passed by the Tribunal is found.

67. In view of the aforementioned facts and circumstances, we quash the charge sheet dated 20.03.2014 and communication dated 28.04.2014 challenged in in OA no. 2976/2014 and charge sheet dated 14.03.2014 and communication dated 7.04.2014 challenged in OA no. 2977/21014. Respondents are directed to consider giving the applicant all such promotions as have been granted to his junior, with all consequential benefits within three months. The consideration for promotion should be based upon the ACRs written upto the year 1999 with due regard to the law declared by Hon'ble Supreme Court in the case of **Abhijit Ghosh Dastidar** (supra).

68. The Original Applications as well as Contempt Petition stand disposed of. Notice issued to respondents is discharged.

No costs.

(V.N.Gaur) **(A.K.Bhardwaj)**

Member (A) **Member (J)**

'sk/sunil'