CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

MISCELLANEOUS APPLICATION No. 170/00152/2017

IN

ORIGINAL APPLICATION No. 170/00733/2017

TODAY, THIS THE 17TH DAY OF MAY, 2018

HON'BLE DR. K.B. SURESH ... MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN ... MEMBER (A)

Smt K. Chandrika
D/o Y.B. Krishna,
Aged 40 years,
Working as
Assistant Commissioner of Income Tax,
Circle-2(2)(1),
1st Floor, BMTC Building,
80 Feet Road, 6th Block,
Koramangala – 560 095 …Applicant.

(By Advocate Shri Aravind V. Chavan)

Vs.

1. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi – 110 001.

2. Revenue Secretary,

Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 001.

3. Under Secretary
To the Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
New Delhi – 110 001 …Respondents.

(By Shri Vishnu Bhat, Senior Panel Counsel)

ORDER

DR. K.B. SURESH, MEMBER (J):

This MA was filed by the respondents after the final orders have been passed in the matter indicating that they did not get an opportunity to file a reply and challenge the process against them.

2. In fact, we had repeatedly given time to the respondents to file their reply and actually passed an order on 02.04.2018 as thus:

> *"We have taken up this matter in the morning and in the morning the DB was not available therefore we had kept the matter for hearing in the afternoon. Unfortunately Shri M.V. Rao, learned counsel for the respondents, has not filed the reply even though he had said that he will file the reply but in the interregnum the respondents had taken a very strange step. They would say that in Annexure-A12 dated 12.03.2018*
>
> *1) OA No. 733/2017 is filed in the CAT*

2) Order dated 14.12.2017 of CAT interim order is extended until further orders.

3) On 05.02.2018 the order was passed indicating four more weeks for reply and two weeks for rejoinder and post on 27.03.2018 for hearing.

Thereafter they make a very curious statement that technically in the order dated 05.02.2018 stay is not granted or extended whereas they have said in their own order that on 14.12.2017 the interim order is extended until further orders.

This is a matter which is covered by a judgment of the Hon'ble High Court of Karnataka and it is brought to our notice that the respondents is going ahead with the disciplinary enquiry which is already stayed by the Tribunal.

We note with regret that the respondents had not filed a reply even though appropriate opportunity has been given. But then the question of fact may not have much relevance in this matter. Only the question of law as to what is the effect of an acquittal by the Hon'ble High Court with a subsequent disciplinary proceeding is the only question. We have asked the respondents to produce F22 a document which is a register prepared contemporaneously and consecutively on assessment order being issued as the case of the applicant is that, as found by the Hon'ble High Court, that on 26/12 of a particular year an order was passed and handed over to Shri Hariharan, the auditor of the original complainant. That being so, the Hon'ble High Court had held that the FIR has no relevance at all as the FIR is recorded on 02.01.2009. The being the case, Shri M.V. Rao, learned counsel for the respondents, was alerted on this issue and was asked to file replies on it. Therefore the only question which arise for consideration in this respect would be whether an appeal has been preferred against the acquittal by the Hon'ble High Court of Karnataka. Apparently this is not done and by this time the order has become concretized.

Therefore we will reserve the matter for judgment but will also permit Shri M.V. Rao, learned counsel for the respondents, to file a written argument note within next 2 days with the copy served on the other side if he wants to bring some other facts and question of law to our notice other than what has been originally stated in the Court.

Reserved for orders.

3. Shri M.V. Rao, Senior Panel Counsel, was present in the

morning when we had specifically informed him that the matter will be taken up only in the afternoon as the Division Bench was assembling only in the afternoon. Apparently Shri M.V. Rao informed the opposite side also of this but in the afternoon he was not present. Therefore we had reserved the orders.

4. Thereafter when the matter was taken up for orders we had informed Shri M.V. Rao by telephone personally more than once that he may now file an argument note which may encompass within it factual issues also as would be in a reply. He agreed to do so on both occasions but failed to do so.

5. In the meanwhile, after the original order was issued this application was taken up on 19.04.2018. We noted that even then the reply is not filed. Shri MV. Rao had submitted that he had sent it for signature to Delhi about 3 weeks back but yet they have not signed and sent it. But in usual course it is only vetted in the higher office and the reply is usually filed by the local authorities. But since no man should be judged unheard, we had placed the matter to the next date on 20.04.2018.

6. On 20.04.2018, we had passed the following order:

"Learned counsel for the applicant is present. Shri MV.Rao, Learned counsel for the respondents is not present. Shri Pratap, Inspector of Income Tax Department has appeared before us and says he requires some more time to file reply. This is a matter in which reply has been sought to be filed for long. In the interregnum interim order is flouted by the respondents on the ground that the High Court order relating to the issue has to be ignored and a 2nd enquiry may be held after collecting some more evidence against the party. Shri Arvind Chavan maintains that this points to motivated attempts of the respondents and that may not be allowed. We had proposed that contempt proceedings may be proceeded against them. Then we bowed to the persuasion of Shri MV.Rao that in one week's time he will file the reply and the matter can be heard.

On the date of hearing in the morning Shri MV.Rao, though was present in the court and also was informed that the matter will be heard in the afternoon. But in the afternoon he had been held up, even though he was gracious to inform the other side that the matter will be taken up in the afternoon. Thereafter, it was posted for orders and even in between also we had informed Shri MV.Rao and passed an order that they will be allowed to file written argument note. In the interregnum, the author of the order also personally called Shri MV.Rao on his telephone twice and indicated to him that he can file written argument note which can take the place of reply also and the matter can be taken up for orders only after that. But even after waiting for some time no such thing is forthcoming. Therefore, We had passed the final order.

At this point Shri MV.Rao filed a petition to recall the order dated 2.4.2018 and posted the matter for orders. At this time, we had informed Shri MV.Rao, that even if he files now the reply, we will look into it. Because justice delivery system is a sword which will cut both ways. It must be equally applicable to the applicant and respondents. So we continued to give him a chance to file reply. Shri MV.Rao would submit that 3 or 4 weeks back he had sent the reply to Delhi for their vetting. But even now they have not sent it back. We will be very much interested to know how the Income Tax Department decided to ignore the High Court order. Therefore, we had given all possibilities to file reply. But, today also Shri Pratap , Inspector of Income Tax Department appears for the respondents and seeks for some more time to file reply. Post the matter on 23.4.2018. Issue copy of order to both sides, if they seek it."

7. On this date also we had given enough time and posted the matter to 23.04.2018 on which day Shri M.V. Rao retired as counsel and Shri Vishnu Bhat, Senior Panel Counsel, appeared in stead. Thereupon we posted the matter to 26.04.2018 when also no reply was filed. Therefore we posted it to the next day on 27.04.2018 when we had passed the following order:

> *"We had taken up the matter today and we have enquired Shri Pratap, departmental representative as to whether any SLP had been filed, as apparently the order of the Hon'ble High Court is dated 14.08.2013. That after nearly 5 years, SLP cannot be expected to be pending. But the respondents have stated in their reply that SLP might be pending for judgment. What exactly that word means, can only be explained by them, as, when we queried Shri Vishnu Bhat, learned counsel for the respondents and Shri Pratap as well, they would say that the reply had come from Delhi and they have no further information about it.*
>
> *Learned counsel for the applicant also do not have any information about the SLP pending in the Hon'ble Apex Court . 5 years is too long for the SLP to come to maturity, if it had been filed and atleast notice would have been issued or it would have been dismissed long long back.*
>
> *We queried Shri Vishnu Bhat, on the merits of the matter, as we feel even though delayed, beyond compare, both parties in the adjudication have equal right of being heard. He would say that other than what is stated in the reply, he has nothing more to say and is unable to comment on what has been stated by the CVC, as he is not representing the CVC and CVC is not a party to this. It seems to us that he is right. Therefore, we will consider the MA in the light of the reply filed by the respondents.*
>
> *MA is reserved for orders."*

But a reply seems to be filed. We therefore decided to hear the matter on merits once again and see if the defence adopted has any merit.

8. Since we felt that both parties in the adjudication have equal right

of being heard, we would hear the matter on merit and prompted Shri Vishnu Bhat to argue the case. Shri Vishnu Bhat would say that he has nothing more to say other than what is there in the reply and in fact the Disciplinary Authority has disagreed with the view of the CVC and he is not representing the CVC. He would say that the Disciplinary Authority was against the advice tendered by the CVC but then to resolve the dispute had to send it to the Secretary of the DoPT who issued an order **"to collect further evidence and to take a tentative view and to submit it to the CVC".**

9. There is no provision under law to continue to gather fresh evidence after a disciplinary inquiry has been concluded and to take any tentative view in the matter. If at all any view is to be taken it has to be a final view by all the four concerned authorities – Disciplinary, Appellate, Review and Revisionary Authorities as the case may be. Shri Vishnu Bhat would say that the matter arose only on the recommendation of the CVC and not at the instance of the departmental authorities. Therefore we had examined the recommendation of the CVC. We quote from it"

> *"CBDT may refer to their letter No. DGIT(V) DP/359/2009 dated 18/01/2016 on the subject cited above.*
>
> *2. On perusal of the complete records forwarded by the CBDT and in particular CBI's report, Order of the Lower Court of the High Court of Karnataka and the Inquiry Officer's Report*

have been thoroughly examined by the Commission. The Commission's observations are as follows:

(i) Since CBI have filed an SLP in Supreme Court, the decision of the High Court has not yet reached finality and it may not be appropriate to decide the matter based on such order which is still being contested.

(ii) Without prejudice to the above and with due respect, the Hon'ble High Court of Karnataka has completely ignored the statement of the independent witnesses (PW-2) Smt. Rajini Chandrasekhar, an officer of a bank who was a witness to the episode of the bribe being delivered and accepted. Further, the Chartered Accountant ShriAdinaryana (Pw-4) who represented M/s. Vimokhsha Technologies Pvt. Ltd., in the proceedings before the accused has categorically confirmed the facts relating to the trap (by giving a statement before the Magistrate (ACMM) u/s 164 of CRPC), though during the course of trial he turned hostile and did not tell the truth though he confirmed the fact of giving the said statement out of free will. Another crucial issue which the Hon'ble Court has misread is that since the assessment order was passed on 26.12.2008 by meeting the officer on 2nd January and by paying bribe it cannot be legally revised. The entire issue is that if the bribe had gone through, the order would not have been legally revised but it would have been most probably substituted by an order to the mutual satisfaction of both. It is true that the order legally could not be withdrawn though it could have been verified u/s 154, which cannot be ruled out. The sequence of the events and in particular the fact of the original assessment order being asked to be brought back, the Chartered Accountant (PW-4) actually bringing it to the office and the conduct post assessment indicates that the game plan is to substitute the order which is an illegal act. Further, there is not much discussion on the authenticity of the entry of the demand in the Demand and Collection Register in respect of the assessment order passed on 26.12.2008.

(iii) Apart from all these, the IO Dr.G.Manoj Kumar has not applied his mind at all to the facts of the cases, he did not conduct the inquiry, he simply stated "respectfully following the Hon'ble High Court Judgement …… said that this charge is not proved and the officer is not guilty ……..". It is

elementaryprinciple that disciplinary proceedings are independent from the proceedings before the criminal court. The quality and level of evidence required in the criminal case is of a far higher authenticity compared to the disciplinary proceedings. While in the criminal proceedings proof of the misconduct is to be adduced, in the disciplinary proceedings the preponderance of probabilities will suffice. The purpose of the former is to punish by way of imprisonment and the later is to judge the suitability in continuance in service. Para 2 of DOPT's OM No.11012/6/2007 Estt. A dated 01.08.2007 may be seen. Be that as it may, IO has not applied his mind at all to the task entrusted to him. While it is a fact that if the Court holds an officer guilty of a criminal misconduct there is a specific provision in the CCS (CCA) Rules to levy suitable penalty dispensing with the conduct of trial the converse is not true. A person acquitted by a Court of a Criminal misconduct does not ip-so-facto get acquitted in a disciplinary proceedings. The CBDT have not appreciated this basic principle in accepting the IO's one line report.

3. In view of the aforesaid, Commission would advise: (a) That CBDT ascertain the present status of the SLP before the Supreme Court and also assist the CBI in suitably pursuing the same. (b) Reject the report of the IO because he has not conducted any inquiry, not examined the witnesses and the listed documents and has not given his independent assessment of the charge based on the principle of preponderance of probability. CBDT may get the inquiry proceedings conducted denovo on merits in a time bound manner and without being prejudiced by the fact that High Court has quashed the order of the trial Court and arrive at a conclusion in accordance with the laid down rules/instructions and seek SSA.

4. Commission find that while the charge sheet was issued on 20.10.2009, IO was appointed on 16.07.2010, IO submitted a line report on 14.03.2014 (took 3 years 9 months), the CBDT took an year and 9 months to process the same. While the delay on the part of IO & CBDT may be brought to their notice for improving their compliance and to suitably reviewing their process.

5. Department's file No.DGIT(V) DP/365/2009 alongwith other related document of the case are returned herewith.

(Rakesh Desai)
Director

Encl: As above.

C.B.D.T.
(ShGopal Mukherjee, CVO),
1ST Floor, Dayal Singh Library Building,
1, DeenDayalUpadhyayMarg,
New Delhi."

10. Since an SLP had been mentioned in the Hon'ble Apex Court , we had queried the department as to whether any SLP had been filed and is it pending even after almost 5 years had elapsed as the Hon'ble High Court orders was passed in the year 2013. The department is unaware of any SLP as well as the applicant is also unaware of any SLP. If any notice has been issued in an SLP at least within 5 years it would have been served on the applicant. Therefore we have to only presume that either no such SLP was ever filed or even if it was filed it has been dismissed. No further information was forthcoming from the original respondents on this.

11. Therefore we proceeded to examine the recommendation of the CVC. It states that a fundamental importance must be given to the 164 statement of the Chartered Accountant than the statement in Court. Quite obviously he is quite unaware of the process of criminal law. He would also say that PW-2 Bank Manager's statement who is none other than the choice of the original complainant had been disregarded

by the Hon'ble High Court. The Hon'ble High Court had given a clear-cut reasons as to why it has been done and it is not open to the CVC to question the judicial wisdom of the Hon'ble High Court. Even otherwise also, it is clear for all to see that had the applicant not being burdened by a false statement of the Investigating Officer that the F22 register did not contain notations about the order passed on 26.12.2008 the case would have been ended in discharge under Section 239 CRPC and not a charge under Section 240 CRPC. This deliberate and willful falsification and modulation of the case by the Investigating Officer had resulted in great prejudice and penury to the applicant. Had it not been there, the case could have been contested and won under Section 482 of the CRPC.

12. The CVC speaks about verification and rectification under Section 154 of the Income Tax Act. Rectification is a process which has to go through higher echelons and will have to be accounted for, for every element. That would not be possible in the light of the questionnaire issued by the applicant and the answers given on the 6 crore plus exemption claimed by the original complainant. Therefore the recommendation of the CVC is in the realm of imagination alone. Besides all these matters had been adjudicated and adjudged in the appellate judgment of the Hon'ble High Court of Karnataka.

13. In such a case the Inquiry Officer had done the correct thing. He

had assessed the evidence available as being provided by the prosecution alone. This evidence has been assessed by the Hon'ble High Court and the Inquiry Officer had also agreed with it. We cannot find any fault in the Inquiry Officer Shri Manoj Kumar accepting this view.

14. Therefore what is the role of CVC in it.

Let us first examine here the connection between the Vigilance activities, and conduct of Departmental inquiries in disciplinary matters. The Vigilance set up in India was introduced as an exercise parallel and almost simultaneous to the formulation of the statutory Central Civil Services (Classification, Control and Appeal), Rules, 1965, which lay down the procedure for conduct of Departmental Disciplinary Inquiries. The Government of India had set up a Committee headed by Shri K. Santanam, which was called the Committee for Prevention of Corruption. On the basis of the recommendations of that Committee, through a Government of India resolution dated 11.02.1964, the Central Vigilance Commission was set up. It was provided in the resolution that the Central Vigilance Commissioner would be appointed by the President under his hand and seal, and that he would not report to any Ministry, though for administrative purposes and release of funds, the

Commission itself was to be attached to the Ministry of Home Affairs, Government of India. In November 1995, 31 years later, the resolution of 1964 was amended, and the provision relating to appointment of the Central Vigilance Commissioner by the President by warrant under his hand and seal was deleted.

15. In September 1997, the Government of India constituted an Independent Review Committee (IRC) to suggest measures for strengthening anti-corruption activities and mechanisms, as part of its efforts against corruption. One of the recommendation made by the IRC was that the Central Government may consider the question of conferring statutory status to the Central Vigilance Commission. The IRC also recommended that the CVC should be made responsible for the efficient functioning of the Central Bureau of Investigation (in short, CBI), which is a criminal investigation agency deriving its powers from the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946).

16. Around the same time, the Honble Supreme Court passed its order dated 18.12.1997 in the case commonly known as Jain Hawala case, in Criminal Writ Petition Nos. 340-343/1993 VineetNarain and Ors. Vs. Union of India and Ors. (1998) SCC 226 : AIR 1998 SC 889.The Honble Supreme Court had also given directions that statutory status should be conferred upon the Central Vigilance Commission and the several consequences following from the

conferment of such status were also laid down by the Honble Supreme Court in its judgment. Thereafter, the Central Government promulgated an ordinance, namely the Central Vigilance Commission Ordinance, 1998 (Ordinance 15 of 1998 dated 25.08.1998) which was promulgated by the President to give effect to the Honble Apex Courts judgment immediately, as the next Session of the Parliament was slightly away.

17. Since certain observations were made further by the Honble Supreme Court regarding some provisions of the said Ordinance promulgated by the President on 25.08.1958, in order to rectify the position, the President then promulgated the Central Vigilance Commission (Amendment) Ordinance, 1998 (Ordinance 19 of 1998) on 27.10.1998.

18. Ultimately, with an intention to replace the two Ordinances, the Government introduced the Central Vigilance Commission Bill, 1998, in the LokSabha on 07.12.1998, which was examined by the Parliamentary Standing Committee on Home Affairs, and the LokSabha passed the Bill on 15.03.1999. But, before the Bill could be considered and passed by the RajyaSabha, the 12th LokSabha was dissolved, and the Bill lapsed. The Government had, in the meantime promulgated the CVC Ordinance, 1999 (Ordinance 4/1999) on 08.01 1999, which also soon expired on 05.04.1999. The Government,

therefore, issued a Resolution in 1999 to continue the Central Vigilance Commission in the interim as a non-statutory body. Simultaneously, the Government re-introduced the Central Vigilance Commission Bill, 1999, which was passed by both the houses of the Parliament, and received the assent of the President on 11.09.2003, and came on the statute book as the Central Vigilance Commission Act, 2003 (Act No. 45 of 2003). With this, the non-statutory status of the Commission ended, and the Central Vigilance Commission is now functioning from 11.09.2003 onwards under the Act No. 45 of 2003.

19. The powers and functions of the Central Vigilance Commission have been enumerated in detail in Sub Section (1) of Section 8 of the said Act, the Clauses (a) to (h) of which prescribe as follows :-

8(1)(a)exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial**; and therefore be an extension of prosecution**.

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub section (1) of section 4 of the Delhi Special Police Establishment Act,

1946 (25 of 1946):

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner.

(c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offense alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988 (49 of 1988);

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise:

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorize the Commission to exercise superintendence over the vigilance administration in a manner

not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters

20. Further, Section 9, of the CVC Act, 2003, prescribes the procedure regarding the conduct of the proceedings of the Commission, and Section 11 of the said Act prescribes the power of the Commission relating to the inquiries conducted by it, as follows :-

11. Power relating to inquiries The Commission shall, while conducting any [inquiry referred to in clauses (c) of sub-section (1) of section 8], have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) and in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents; and

(f) any other matter which may be prescribed.

21. Section 12 of the Act prescribes that the proceedings before the

Commission would be judicial proceedings, as the Commission shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Act 2 of 1974), and that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code (Act 45 of 1860).

22. In various sections of the Central Vigilance Commission Act, 2003 mention has been made of other related/connected statutes and statutory rules, which can be enumerated as follows :-

ALPHABETICAL LIST OF OTHER STATUTES

REFERRED IN THE CENTRAL VIGILANCE COMMISSION ACT,2003

Sl.

Name of other Statutes Referred

Section of Central Vigilance Commission Act, 2003 where reference is made.

1.

All India Services Act,1951 (61 of 1951)

26

2

Code of Civil Procedure, 1908 (5 of 1908)

11

3.

Code of Criminal Procedure,1973 (2 of 1974)

8(1),8(c),8(d), 8(e), 12

4.

Companies Act,1956 (1 of 1956)

2(d)

5.

Delhi Special Police Establishment Act, 1946 (25 of 1946)

2(c),8(b),14(2)

6.

Foreign Exchange Management Act,1999 (42 of 1999)

26

7.

Indian Penal Code (45 of 1860)

12, 16

8.

Prevention of Corruption Act, 1988 (49 of 1988)

8(1),8(c),8(d), 8(e), 8(f), 26

23. From all the above discussions, it is very clear that from the very beginning, since its inception itself, the Central Vigilance Commission was intended to be a mechanism for curbing and controlling corruption,

conducting inquiries, and probing into cases of corruption, either itself, or through the CBI, and even enforcing production of documents and witnesses for the purpose of conducting its inquiries, which are now-judicial in nature, and coming to its conclusions. But, what is important to note here is that even though the Central Vigilance Commission was set-up in 1964, and as per the history described above, it has continued to be in existence, and even became a statutory body by the Act of 2003, **it has always been considered/treated as a body concerned with the criminal aspects of the cases of corruption**. In regard to such criminal aspects of cases of corruption, it can either conduct its own inquiries under Clauses (c) or (d) of Sub Section (1) of Section 8 of the CVC Act, 2003, acting as a Civil Court under Section 11 of that Act, or cause such inquiries to be conducted by either the CBI, or any other agency, even in cases already under trial.

24. At no point of time has either the Parliament, or anybody else, suggested, or any Rule or Regulation has been framed, for the Central Vigilance Commission to have any role in so far as the civil / departmental / conduct rules liability in respect of the cases of corruption are concerned, or the Departmental authorities handling of the conduct of the disciplinary inquiry is concerned. As is apparent from the table as reproduced in para

50 above, while all the other relevant concerned statues, with which the Commission is concerned, have been apparently cited in the Central Vigilance Commission Act, 2003, there is no mention whatsoever in any portion of the said Act of the Central Civil Services (Classification, Control and Appeal) Rules, 1965,which were framed after the Commission had come into existence in the year 1964.

25. The converse is also true. The Central Civil Services (Classification, Control and Appeal), Rules, 1965, were published in the Gazette of India Notification dated 20.11.1965, and came into force on 01.12.1965, about more than a year after the constitution of the Central Vigilance Commission . However, in none of these statutory rules, which carry the weight of subordinate legislation with them, and which Rules the Honble Supreme Court has held to be nothing but codification of principles of natural justice, and which are more elaborate and more beneficial to the employees than even the principles of natural justice (Director General of Ordnance Services Vs. P.N. Malhotra 1995 Supp (3) SC 226 : AIR 1995 SC 1109), has the Central Vigilance Commission been mentioned anywhere. When these 1965 rules were being framed to replace the earlier CCS (CCA) Rules, 1957, and the Civilians Defence Services (CCA)

Rules, 1952, which were both repealed with the Central Civil Services (Classification, Control and Appeal) Rules, 1965, coming into force w.e.f. 01.12.1965, if the legislature had so intended, the one year old nascent organization of Central Vigilance Commission, specifically created by the Government to combat corruption, could have atleast been mentioned in any one of the 35 rules contained in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is not so, and it is very rightly not so.

26. As was observed by the Honble Supreme Court in DSilva, A.N. Vs. Union of India: AIR 1962 SC 1130 : 1962 Supp. (1) SC R 968, the nature and purpose of a Departmental disciplinary inquiry is only to advise the punishing authority in the matter of investigating into the charges brought against the delinquent officer, and that, based upon such advise elucidated from the findings of the inquiry, the responsibility both in respect of finding him guilty, or not guilty, as well as punishing him if he is found guilty, rests only and only with the punishing authority (State of Assam Vs. Bimalkumar; AIR 1963 SC 1612: 1964 (2) SCR 1; and Union of India Vs. Goel, H.C., AIR 1964 SC 364: 1964 (4) SCR 718).

27. Moreover, the conduct of a disciplinary inquiry is in the

nature of quasi judicial proceedings at all of its stages. The Inquiry Officer is supposed to conduct his inquiry in a quasi judicial capacity. The Disciplinary Authority thereafter has to take an independent decision of his own in the matter, in a quasi judicial capacity. The Appellate Authority, and the Review or Revisional Authority, wherever revision lies, also are supposed to follow the principles of natural justice, and act in quasi judicial capacity. Therefore, while acting in quasi judicial capacity, the Inquiry Officer, the Disciplinary Authority, the Appellate Authority, and the Review or Revisional Authority, have to be guided only by their own individual/personal judgment, and the papers and evidence before them, as has been elucidated during the course of the disciplinary inquiry, after delinquent was given an opportunity of being heard, and to try to rebut the charges brought against him. While arriving at their own individual/personal conclusions, they cannot be guided, or dictated to, by any other person or authority, or correspond with any authority, which has not been prescribed a statutory role, as either the Inquiry Authority, or the Disciplinary Authority, or the Appellate Authority, or the Revisional/Review Authority under the Central Civil Services (Classification, Control and Appeal), Rules, 1965. Thus, in a departmental inquiry, the case of a delinquent

official, has to be considered, and the evidence for or against him assessed by the independently acting minds of only four identifiable persons in authority the Inquiry Officer / Authority, the person who is designated as his Disciplinary Authority, a person senior than the designated Disciplinary Authority who has been designated as Appellate Authority, and, where the service rules applicable to the delinquent so prescribe, another further senior / higher person, who is the incumbent posted against the post designated as the Revisional / Review Authority. No fifth mind comes into the picture.

28. Combating corruption and locating cases of Government servants having indulged in corruption clothes the CVC with the nature of an investigator, or a prosecutor, and since a prosecutor cannot be a judge in his own case, the legislature has very rightly and consciously maintained the iron / steel wall which should separate the Vigilance functions from the proceedings of the departmental enquiries, and from the performance of the quasi-judicial functions of the departmental Disciplinary and other superior authorities. The Central Vigilance Commission has been very rightly given the authority over even the CBI, acting under the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), and has been given powers under the Prevention of Corruption Act, 1988 (Act 49 of 1988), apart from IPC,

FEMA, 1999, Companies Act, 1956, and the All India Services Act, 1951, along with the Code of Civil Procedure, and the Code of Criminal Procedure. But, at the same time, and very rightly so, the Central Vigilance Commission has not been installed at any place in the hierarchy of the Inquiry Authority / Inquiry Officer, the Disciplinary Authority, the Appellate Authority, or the Revisional/Review Authority, under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, anywhere. Therefore, it is clarified and made clear that the CVC, or even the Central Bureau of Investigation acting under its jurisdiction under the Delhi Special Police Special Act, 1946 (Act No. 25 of 1946), cannot have any say or role in the conduct of the disciplinary inquiry, at any stage, or in any manner whatsoever, as a fifth mind/authority.

29. The impact of consultation with the Central Vigilance Commission on the fairness of the procedure adopted, in the departmental disciplinary enquiry was very adversely commented upon by the Honble Supreme Court in NagarajShivaraoKarjagi Vs. Syndicate Bank, 1991 (1) SCALE 832 : 1991 (2) JT 529 : 1992 AIR (SC) 1507 : 1991 (3) SCC 219. The Honble Apex Court has clearly laid down the law that the authorities dealing with departmental enquiry cases have to exercise their own quasi-judicial discretion alone, having regard to the facts and circumstances of each case. They cannot act

under the dictation of the Central Vigilance Commission, or of the Central Government. No other party like the Central Vigilance Commission, or the Central Government, can dictate to the Disciplinary Authority, or the Appellate Authority, as to how they should exercise their power, and as to what punishment they should impose on the delinquent officer. What the Honble Apex Court meant was that the streams of natural justice can flow un-sullied only and only if every such outside/external influence is kept away from the application of their mind totally freely and independently by the four authorities statutorily prescribed for applying their mind to the case of the delinquent.

30. Further, in a case very similar to the present case, in D.C. Agrawal Vs. State Bank of India, 1991 (2) SLR P&H 578, the disciplinary authority took into consideration the report/views of the Central Vigilance Commission, to disagree with the findings arrived at by the Inquiry Officer, and to hold that some charges stood proved. The Disciplinary Authority did not communicate full reasons of his disagreement, and as to why and how it had taken the CVCs views into consideration in coming to the conclusion to differ/disagree with the Inquiry Officers report, thus preventing the petitioner therein from making an effective representation against the proposed punishment. It was held by the Honble High Court that there could be no escape

from the conclusion that the principles of natural justice had been violated.

31. Though the legislature has maintained this steel wall of separation between the Vigilance and the departmental inquiry functions while framing the CCS (CCA) Rules, 1965, and not mentioned either the Central Vigilance Commission, or the Central Bureau of Investigation, in any part of those rules, even by an amendment in the last 46 years, yet some discrepancy has crept in/entered into, because of an administrative instruction issued by the Government of India, Ministry of Home Affairs, on 18.11.1964, which was issued after the creation of the Central Vigilance Commission as a non-statutory body. This instruction may be reproduced from Swamys Compilation of CCS (CCA) Rules, as Government of India decision Two below Rule 29 of the CCS (CCA) Rules, 1965, as follows :-

29.[Revision]

(1) Notwithstanding anything contained in these rules

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and

[Adviser (Human Resources Development), Department of Telecommunications] in the case of a Government servant serving in or under the Telecommunications Board]; or

(iv) the Head of a Department directly under the Central Government in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the Appellate Authority, within six months of the date of the order proposed to be [revised]; or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and [revise] any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

[Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary]:

Provided further that no power of [revision] shall be exercised by the Comptroller and Auditor-General, [Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications]or the Head of Department, as the case may be, unless

i) the authority which made the order in appeal, or

ii) the authority to which an appeal would lie, where no appeal has

been preferred, is subordinate to him.

(2) No proceeding for [revision] shall be commenced until after

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for [revision] shall be dealt with in the same manner as if it were an appeal under these rules.

GOVERNMENT OF INDIAS DECISIONS

(1) Self-contained, speaking and reasoned order to be passed and to issue over the signature of the prescribed Revising Authority.-See GID (1) below Rule 15.

(2) Scrutiny of punishments to be made by Vigilance Officers.- Recommendation No. 75 (ix), contained in Paragraph 9.23 (ix) of the Report of the Committee on Prevention of Corruption, has been considered in the light of the comments received from Ministries / Departments. The recommendation consists of the following two parts :-

(i) The Chief Vigilance Officers should have the power to scrutinize the correctness of the findings and conclusions arrived at in a departmental inquiry and the adequacy of punishment and initiate action for revision if he considers that the punishment awarded is inadequate; and

(ii) The Delhi Special Police Establishment should be authorized to move for revision of findings and punishment in cases started on their report.

It is further stated that in all these matters the advice of the Central Vigilance Commission should be freely obtained.

2. As regards (i) above, a Vigilance Officer cannot obviously scrutinize findings accepted and orders passed by an officer in his own hierarchy to whom he is subordinate. For example, when a Secretary passes orders, there can be no question of the Vigilance Officer of the Ministry scrutinizing the case, or if the Head of a Department passes orders, his Vigilance Officer cannot examine the correctness of the decision. The intention of the recommendation is that, findings and orders in disciplinary cases should be scrutinized at the next higher level the officer at that level (Secretary, Head of Department, etc.), who can decide whether the order passed by the lower authority needs to be revised.

3. In a case where there is an appeal in a disciplinary case, the findings and the orders of punishment have, in any case, to be scrutinized. Such scrutiny would normally be done by the Vigilance Officer though of course, orders of the appropriate Appellate Authority (Secretary, Head of Department, etc.), would be taken. This class of

cases does not, therefore, present any difficulty. There are, however, cases in which a Government servant is either exonerated in disciplinary proceedings or is awarded punishment against which he considers it imprudent to appeal. In a certain percentage of these cases, it is desirable that the power of revision should be exercised. The object of this is to ensure by a systematic arrangement of scrutiny that the power of revision is exercised in all suitable cases.

4. As regards (ii) above, attention is invited to the procedure laid down in Paragraph 6 of Central Vigilance Commissions Circular No. 9/1/64-D.P., dated the 13th April, 1964 (not printed), which gives effect to this part of the recommendations.

[G.I.M.H.A., OM No. 43/109/64-AVD, dated the 18th November, 1964, addressed to the Vigilance Officers of all Ministries / Departments of the Government of India]

32. This instruction was issued by the Government of India, Ministry of Home Affairs, by following the then CVCs Circular dated 13.04.1964, when the Central Vigilance Commission itself was a non-statutory body and had no force of law to support its dictates. Therefore, following the law as laid down by the Honble Apex Court in the case NagarajShivaraoKarajgi(supra) and by the Honble Punjab and Haryana High Court in D.C. Aggarwal (supra), the CVCs Circular No. 9/1/64 DP dated 13.04.1964, and in

particular Para no. 6 of the same, and the Government of India O.M. No. 43/109/64-18.11.1964, reproduced above, are struck-down as un-constitutional, illegal and abhorrent to the rule of law, and principles of natural justice. Striking down these two Circular/O.M. is essential specially since there is no provision in these instructions for the Vigilance Officer concerned to give an opportunity of being heard to the delinquent Government official, whose departmental disciplinary inquiry case is being so scrutinized, and also, since there cannot be any pedestal for the CVC to be placed in the middle of the statutory procedure prescribed for holding the Departmental Inquiries, above, below, or in-between the Inquiry Authority, the Disciplinary Authority, Appellate Authority, or the Review /Revisional Authority, where such review / revision has been provided for. The CVC cannot be a supernumerary fifth mind, when no statutory prescription has been made for the interpolation of such a fifth mind to assess the evidence for or against a delinquent during the course of the progress of a disciplinary inquiry. Therefore, any and all further instructions, issued by the CVC, ever since 1964, regarding the requirement of consultation with the Office of the CVC, during the course of, or in between, the conduct of the departmental inquires by the designated statutory disciplinary authorities of

various Ministries / Departments / Organizations / P.S.Us. of the Government of India (or the State Government, as the case may be) are also therefore illegal, and without jurisdiction, and all such instructions of the CVC and/or the Vigilance Wings / Sections are also set-aside, and struck down as un-Constitutional, and against the principles of natural justice.

33. In the case of the CBI also, under the Delhi Special Police Establishment Act, 1946, no role has been assigned to the CBI other than that of a criminal investigation agency, and since an investigating agency looking into the criminality aspect cannot act in quasi judicial capacity, and cannot similarly interpose itself as either an Inquiry Authority, or the Disciplinary Authority, or the Appellate Authority, or the Revisional Authority under the CCS (CCA) Rules, 1965.Therefore,even the CBI cannot also have any role to play, or called upon to give any opinion or suggestion to any of these four statutory authorities prescribed under the CCS (CCA) Rules, 1965, who are required to act in quasi judicial capacity in their own right, and are individually responsible to apply their own mind alone, and to scrupulously follow the principles of natural justice.

34. It has to be noted that, as mentioned earlier also, vigilance is an action which clothes the authority involved in the process of

vigilance with the cloak of either an investigator, or a prosecutor. Since under the Indian Law, under Common Law principles, investigating agencies / authorities and the prosecuting agencies or authorities, cannot be a judge also, a person who is involved with the aspects of vigilance within an organization cannot have any role to play in the conduct of departmental inquiry, which is a totally quasi judicial function at all the levels of Inquiry Authority / Officer, Disciplinary Authority, Appellate Authority, and the Revisional/Review Authority, as mentioned earlier also. However, in total violation of these basic principles flowing from the Common Law principles of natural justice, it is observed that in many organizations and Departments and Ministries of Government of India, the Vigilance Section gets involved in pursuing the various stages of the disciplinary inquiry, including the stage from the framing of charge against the delinquent official, up to the stage of award of punishment by the Disciplinary Authority, the decision of the Appellate Authority on the appeal against it, and, finally, exercising of Review/Revisional powers, where applicable. This is anathema to the spirit of laws as they exist in India, and under the basic Common Law principles of natural justice, it is like Insider Trading in Stock Exchanges, and akin to the French and Italian System of a

prosecutor judge, permissible under the Civil Law principles,but far-far removed from the principles of Common Law which are followed scrupulously in Indian Laws.

35. As has already been mentioned above, since the holding of disciplinary inquiry involves quasi judicial functions to be performed at every stage, by every authority concerned, and such quasi judicial authority functions can be performed by them only by an independent application of mind involves their own mind alone, totally aloof, removed, or un-influenced by the opinion of anybody, or of the Vigilance wing of the organization, which may be interested in successfully prosecuting a delinquent Government official, ensnared / caught / nabbed by the Vigilance Wing/section in a particular action on wrong footing, the Vigilance Wing/section of any organization cannot be allowed to have its own say at any of the stages of the proceedings of the disciplinary enquiry. The steel wall erected by the legislature (and very rightly so) for the Vigilance functions to be totally separated from the quasi-judicial functions involved in a disciplinary enquiry process, has to be maintained at all costs.

36. It is clear that the framing of memorandum of charge, and the list of documents by which the charge would be proved, and also the list of witnesses through whom the charge is intended to be proved, and the

articles of charges as are made-out, have all to be in the language as approved by the Disciplinary Authority alone, after application of his own independent mind. This issue was examined in the cases of Sukhendra Chandra Das Vs. Union Territory of Tripura, AIR 1962 Tripura 15, Manihar Singh Vs. Superintendent of Police, AIR 1969 Assam 1; Union of India Vs. J.A. Munsaff, 1968 (17) FLR 14 SC; and Shardul Singh Vs. State of M.P., AIR 1966 MP 193, with concurring judicial pronouncements.

37. The role of the Vigilance Wing or section in institution of a disciplinary proceedings can at best be limited to, and end with, giving a detailed narration of the incident/wrongful action in which the delinquent Government official was found to be involved, and giving a list of the possible Articles of charges, and a list of the possible documents through which the guilt of the delinquent official can be tried be proved, and also providing a list of possible witnesses, who can throw light on various aspects of the incident, or wrongful action, claimed by the Vigilance Wing or section to have been indulged in by the delinquent Government official. The Disciplinary Authority has to thereafter necessarily then use his own judgment, finalise the memo of charges, and Articles of charges, and have them served, and thereby initiate the disciplinary proceedings. Thereafter, the Vigilance Wing or

section of the organization has to be kept consciously separated (by a notional steel wall) from what all happens after the Vigilance Wing or section has provided its initial reports and details to the Disciplinary Authority concerned.

38. As has been already held in the cases cited above, in para 64, unless the Rules in this regard so permit, it is the role of the Disciplinary Authority alone to either himself frame, or cause to be framed by those working under him or his immediate juniors, and then himself approve, the memorandum of Articles of charge, with an independent application of his own mind, and, this could very well be done by him after studying the information and documents sent to him by the Vigilance Wing or section in regard to the incident of wrongful action on the part of the delinquent Government official. Also, the Disciplinary Authority alone can decide as to which of the documents out of the list of documents suggested by the Vigilance Wing or section should be relied upon for establishing the case of the administration against the applicant as suggested by the Vigilance wing or section. The decision on the list of the documents proposed to be relied upon has once again to be taken, or cause to be taken by his immediate juniors, and then approved by himself, in a totally neutral and above board manner, by the Disciplinary Authority by an

application of his own mind alone, without being influenced by any suggestion or direction from the Vigilance Wing or section of the organization. Similar would have to be the case with the list of proposed witnesses, and the Disciplinary Authority has to independently decide, or cause to be decided by his immediate juniors, and then approve it himself, by an application of his own mind alone, as to which witnesses ought to be included in the list of witnesses through whom the incident or wrongful action of the delinquent Government official may be sought to be proved by the Presenting Officer during the departmental inquiry.

39. Thus the whole initial task of finalization of the memorandum of Articles of charge, and the list of documents and witnesses through which the Articles of charge are sought to be proved, has to be performed, or cause to be performed by his immediate juniors, and then approved himself, by the Disciplinary Authority alone,by an application of his own mind alone, acting in his own individual capacity. Since the subsequent actions of the Disciplinary Authority are quasi judicial in nature, the duty to perform all those quasi-judicial tasks gets attached to the individual incumbent officer who is holding the substantive charge of the concerned post/ designation, designated as the Disciplinary Authority of the delinquent Government official

concerned, and not merely any officer, or any other officer who is merely looking after the current duties of the post concerned.

40. Even an Officer holding only the current charge of the duties of the post designated as the Disciplinary Authority of the delinquent Government official cannot perform these crucial statutory functions of finalization of the memorandum of charge, Articles of charge and the list of documents and witnesses through which the Articles of charge are sought to be sustained, and the subsequent quasi-judicial functions as the Disciplinary Authority.

41. This principle was first enunciated by D.G.P.&Ts Memo No. STB/112/23/49 dated 15th December, 1949, read with Memo of even number dated 26th February, 1951, in the context of junior officers looking after current duties of a higher post. Later, it was reiterated by the Government of India, Ministry of Finance, O.M. No. F 12(2) E.II(A)60 dated 15th October, 1960, laying down the requirement of Gazette Notification for the Officer appointed to hold the current duties of a post to exercise statutory functions. This principle was once again reiterated by the Government of India, Ministry of Home Affairs, O.M. No. F.7/14/61-Ests.(A) dated 24th January, 1963. These instructions remain unchanged, and the 1960 and 1963 O.Ms. have continued to be referred to at Government of Indias decision No. (2) below Rule 12 of the CCS (CCA) Rules, 1965, in Swamys compilation.

42. Needless to add therefore that that very incumbent officer, who holds the substantive charge of the post concerned in his individual capacity, and is not holding such charge as an additional charge, or charge of current duties of the post, alone can be designated as the Disciplinary Authority of the delinquent Government official, and can appoint and nominate the Inquiry Officer and the Presenting Officer. Once again, if there is a request made by the delinquent official for change of the Inquiry Officer, then also, only a regularly posted incumbent officer, substantively posted against the post designated as the Disciplinary Authority of the delinquent Government official concerned, who alone can decide about changing the Inquiry Officer.

43. The delinquent Government servant does not however have a right to request for a change of the Presenting Officer, as the Presenting Officer is merely an official presenting the case as had been built up by the concerned Vigilance Wing or section of the organization, and, on behalf of the organization, try to prove the case of the administration before the Inquiry Officer. But, it may be added here that though the Rules as prescribed in this regard may not have so prescribed thus far, Common Law principles of natural justice would require that the Presenting Officer in a disciplinary enquiry cannot also be an official from the Vigilance Wing or section, though he would be required to try to prove the case as made out by the Vigilance Wing or

section initially as a result of their Vigilance activities.

44. At the stage of accepting the inquiry report of the Inquiry Officer and communicating it to the delinquent Government official, if the Disciplinary Authority opts to differ / disagree with the findings of the Inquiry Officer, then the task of communicating the reasons for his difference or disagreement from the findings of the Inquiry Officer, along with the report of the Inquiry Officer, is also a quasi judicial function, which can be performed only by the regular incumbent officer posted in substantive capacity against the post designated as the Disciplinary Authority of the delinquent Government official concerned. This task, and the subsequent task of giving a personal hearing to the delinquent Government official in respect of the findings arrived at by the Inquiry Officer, as well as any points of disagreement and the grounds of disagreement mentioned by the Disciplinary Authority for being replied to, is also a quasi judicial function, which also can be performed only by the regular incumbent officer, substantively posted against the post which has been designated as the Disciplinary Authority of the delinquent Government official concerned. Even a person who is holding an additional charge/charge of the current duties of that post, cannot perform such quasi judicial functions, unless he has been Gazette Notified for substantively performing the statutory functions of that post. Since these are quasi judicial functions, the

Disciplinary Authority does not have any requirement of consulting anybody or any authority in regard to as to whether he should, in his individual capacity, accept the findings of the Inquiry Officer, or dis-agree with any parts or the whole of the findings of the Inquiry Officer, and communicate both the report of the Inquiry Officer, and the note of his disagreement, if any, detailing the points on which he dis-agrees with the Inquiry Officer, along with explanation or reasons of such disagreement, to the delinquent Government official.

45. It appears that following the 13.04.1964 Instructions of the CVC, as well as the Government of India, Ministry of Home Affairs O.M. No. 43 /109/ 64 - AVD, dated 18.11.1964, reproduced above, in many Ministries of Government of India, the Disciplinary Authorities are being compelled to send all the documents, and the report of the Inquiry conducted by the Inquiry Officer, to either the office of the CVC, or the office of the Central Bureau of Investigation, or both, for advice. Thereafter, when once the CBI or the CVC have given any advice or opinion on that matter, or regarding those files, it is quite obvious that the streams of natural justice got polluted, and cannot and do not flow free. It would be futile to imagine that the Disciplinary Authority would still then be able to apply his own independent mind, and arrive at his own independent conclusion, independent of the opinion in writing given by the Central Vigilance Commission or the Central Bureau of

Investigation. This apprehension was expressed in the following words by the Honble Punjab and Haryana High Court in the case A.K. Roy Choudhry Vs. Union of India &Ors., 1982 (1) SLR 443 Punj :-

The opinion of an august body like the Central Vigilance Commission would obviously carry great weight with the Disciplinary Authority in reaching a final conclusion. At any rate, the possibility of such an influence cannot be negatived.(Emphasis supplied)

46. Rule 29 of the CCS (CCA) Rules,1965, does provide for consultation with the UPSC, and prescribes that the UPSC may advise the Government in regard to the quantum of punishment to be imposed, as provided for under Article 320 (3)(c) of the Constitution of India, but by no stretch of imagination can such advise of the U.P.S.C. be sought when prior to that itself it has been stated that the previous Memorandum itself was issued by order and in the name of the President of India. There appears to be no provision for U.P.S.C. to tender any advice in cases where orders have already been passed by order or in the name of the President.

47. Once again, in the opinion of the UPSC, signed by the Deputy Secretary, and sent back on 18.07.2006, the whole facts of the case were re-appreciated by the U.P.S.C. once again, and the UPSC in fact gave the advise that the ends of justice would be met if a penalty of 5% cut in pension for a period of three years was imposed on the

applicant. Thereby, thus once again the independence of the quasi-judicial functioning of the Disciplinary Authority was compromised, inasmuch as no scope was left by the U.P.S.C. for the Disciplinary Authority to arrive at an independent conclusion of his own, different from that of UPSC, for the appropriate penalty to be imposed upon the delinquent Government official. By blindly following the advise of first the CVC, and then the UPSC, the order passed on 20.09.2006 (Annexure A/2), without giving any supportive reasons, and signed by Shri A.K. Patro, Desk Officer Vigilance-II, goes against the very basis of the CCS (CCA) Rules,1965, and the legality of the orders which may be passed under CCS (CCA) Rules,1965, and was entirely illogical and abhorrent in the eyes of law, and is struck down as illegal.

48. The legal position arising out of the consultation with the UPSC and with the Central Vigilance Commission, has come to be analyzed in a number of cases. The Honble Supreme Court has considered the issue of the nature, impact, and the follow-up action required on the consultation with the U.P.S.C. prescribed under Article 320 (3) (c) of the Constitution in the following landmark cases : (1) Union of India &Anr. Vs. T.V. Patel, (2007) 4 SCC 785; (2007) 5 SCR 373; (2) State of UP Vs. ManbodhanlalSrivastava, AIR 1957 SC 912 : 1958 SCR 533;, and (3) Ram GopalChaturvedi Vs. State of M.P., (1969) 2 SCC 240: AIR 1970 SC 158: 1970 (1) SCR 472. It has been held that though the

advice given by U.P.S.C. need not be supplied to the delinquent Government official, the recommendations of the U.P.S.C. are not binding upon the Disciplinary Authority, who still has the responsibility and legal duty to arrive at his own independent decision on the quantum of punishment to be imposed on the delinquent official. In the case of State of U.P. Vs. ManbodhanLalSrivastava (supra) the Honble Apex Court noted that the process of consultation with the UPSC under the provisions of Article 320 (3) (c) of the Constitution of India was not complied with, and the Constitution Bench of the Honble Supreme Court had held that the provisions of Article 320 (3) (c) of the Constitution of India are not mandatory, and that they do not confer any rights on a public servant, so that absence of consultation with the U.P.S.C., or any irregularity in consultation with the U.P.S.C., does not afford him a cause of action in courts of law. But, in the instant case, it does not appear that after obtaining the report / advise of the U.P.S.C., the designated Disciplinary Authority had performed its legal duty and fulfilled the responsibility to arrive at his own independent decision on the quantum of punishment to be imposed on the applicant as the delinquent official.

49. In the case of A.N. DSilva Vs. Union of India, AIR 1962 SC 1130 : 1962 (Supp) 1 SCR 968, the Division Bench of the Honble Supreme Court held clearly that just because Article 320 (3) of the Constitution

of India provides that the UPSC shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, **the UPSC does not become an Appellate Authority over the Inquiry Officer,** and that the President is in no way bound by the advise of the Union Public Service Commission. Therefore, it was made amply clear by the Honble Supreme Court that even if while making their recommendation or tendering their advise the Union Public Service Commission may have expressed an opinion or a conclusion on the merits of the case, as to the misdemeanour alleged to have been committed by a public servant, and such conclusion may be different than the conclusion of the Inquiry Officer, the U.P.S.C., opinion is not binding.

50. In the case of N. Rajarathinam Vs. State of Tamil Nadu and Another (1996) (10) SCC 371, the Tamil Nadu Public Service Commission, when consulted, had recommended to take a lenient view in the matter, but the Government had not accepted the recommendation. **The Honble Supreme Court again held that under Article 320 (3) (c), the view of the Public Service Commission being only recommendatory, the Government was not bound to accept the recommendation made by the Public Service Commission.** The Honble Supreme Court reiterated that it is only for the Statutorily prescribed Disciplinary Authority to take into

consideration all the relevant facts and circumstances, and if the Disciplinary Authority finds that the evidence establishes misconduct against the public servant, the Disciplinary Authority is perfectly empowered to take appropriate and independent decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is also only for the Disciplinary Authority alone to independently consider, and take a decision, keeping in view the discipline in the service.

51. Once again in the case of Union of India and Another Vs. T.V. Patel,(supra) consultation with the Public Service Commission under Article 320(3)(c) on all disciplinary matters came to be examined, and it was again held by the Honble Supreme Court that since the process of consultation itself is not mandatory, the absence of consultation, or any irregularity in consultation process, or any illegality in furnishing a copy of the advise tendered by the Public Service Commission to the delinquent Government official, does not confer the official a cause of action in a Court of law. The Honble Supreme Court went on to clarify that under Rule 32 of the CCS (CCA) Rules, 1965, the expression along with the copy of the order passed in the case by the authority making the order, would mean only the final order passed by the authority imposing penalty on the delinquent Government servant.

52. Needless to add here that since neither the UPSC nor the CVC, have been designated as a tier of the prescribed statutory authorities under the CCS (CCA) Rules, 1965, to decide about imposing a penalty on the delinquent Government servant, they cannot also suggest any penalty, and even if the UPSC suggests such a penalty, the Constitutional provisions concerned do not require the Disciplinary Authority or the Appellate Authority or the Revisional/Review Authority to consider and necessarily follow the opinion or advise tendered by the Public Service Commission. Since the CVC does not have any constitutional basis or foundation, its advise, obviously, would carry even lesser weight than that of the U.P.S.C. The issue raised at para 40 (d) / ante is therefore answered accordingly.

53. Also, while the Union Public Service Commission finds mention at a place in the CCS (CCA) Rules, 1965, on the contrary it is seen that the Central Vigilance Commission, which had

already been created a year earlier, in 1964, though as a non-statutory body then, does not find even a mention in the CCS (CCA) Rules,1965. Therefore, it is clear that the Legislature never intended for the CCS (CCA) Rules, 1965, to provide for any consultation whatsoever, at any stage whatsoever, with the Central Vigilance Commission, since such a consultation, or opinion furnished by the CVC, may affect or influence the mind of the prescribed statutory authorities, the Disciplinary Authority, or the Appellate Authority, or the Revisional / Review Authority concerned. In the case of State of A.P. Vs. Nizamuddin Ali Khan, S.N., AIR 1976 SC 1964 : 1977 (1) SCR 128 : (1976) 4 SCC 745; 1977 (2) LLJ 106, it was clearly laid down by the Honble Supreme Court that the Disciplinary Authority cannot act on the basis of the report of any person other than the Inquiry Officer, without giving the delinquent an opportunity to meet the contents of that report. In a case specifically concerning consultation by the statutory authorities with the CVC, which reached the Honble Supreme Court, Sunil Kumar Banerjee Vs. State of West Bengal and Others, AIR 1980 SC 1170 : (1980) 3 SCC 304 : 1980 (2) SLR 147, it was found by the Honble Supreme Court that though the Disciplinary Authority had consulted the Central Vigilance Commission, but the records disclosed that the conclusion of the

Disciplinary Authority was arrived at independently, on the basis of the relevant record, and the Honble Apex Court also noted that there was no reference of the advise of the Central Vigilance Commission in the preliminary findings of the Disciplinary Authority as communicated to the delinquent officer. It was held by the Honble Supreme Court that since the Disciplinary Authority had not in any manner been influenced by the advise of the Central Vigilance Commissioner, no illegality had taken place in that particular case. Therefore, the crux of the matter lies in the influence which the CVCs opinion can have on the minds of the statutory authorities concerned with the disciplinary proceedings, which influence has to be, and must be avoided at all costs, even if the CVC has been consulted.

54. To sum up, it is clear that while consultation with the Union Public Service Commission is a Constitutional provision through Article 320 (3) (c) of the Constitution, the consultation with U.P.S.C. may or may not be availed of by the Disciplinary Authority, or the appellate Authority, or the Revisional/Review Authority, since,as has already been held by the HonbleCourts in numerous

cases, as cited above, such consultation is not mandatory, and even the advise tendered by the Union (or State) Public Service Commission is not binding upon any of the statutory authorities involved in the process of conducting and concluding a departmental disciplinary enquiry.836-

55. Further, even though the jurisprudence on the jurisdiction of the Central Vigilance Commission, first as a non-statutory body, and then as a statutory body under an Ordinance, and, then again as a non-statutory body, and then as a statutory body under the Central Vigilance Commission Act, 2003, has developed along with the development of the case law on the CCS (CCA) Rules, 1965, the framing of which had followed the creation of Central Vigilance Commission by one year, yet, since even as yet no amendment has been brought about by the legislature in the body of the CCS (CCA) Rules, 1965,to incorporate the Central Vigilance Commission at

any stage / pedestal above or below the Disciplinary Authority, or the Appellate Authority, or the Revisional/Review Authority as prescribed in the CCS (CCA) Rules, 1965, any consultation with, or seeking the opinion from the Central Vigilance Commission in regard to the disciplinary inquiry matters, is illegal, and uncalled for, and is hereby declared as ultra vires.

56. The CVC cannot be allowed to abrogate to itself power without responsibility. While the incumbent officers functioning as the Inquiry Officer, the Disciplinary Authority, the Appellate Authority and the Revisional / Review Authority, as the case may be, are all enjoined by the statute and subordinate legislation to function in quasi judicial capacity in the conduct and conclusion of a disciplinary enquiry, and to apply their mind alone, independently, without heeding to any outside instructions or influence, as is wont of persons acting in judicial or quasi-judicial capacity, no such

legal / statutory duty has been cast upon the CVC in respect of giving any opinions in the matters related with the conduct and conclusion of departmental enquiries, by any portion of the law, even the Central Vigilance Commission Act, 2003, or the CCS (CCA) Rules, 1965, or any other statutes, rules or regulations issued in this regard. The Central Vigilance Commission cannot therefore be allowed to enjoy un-bridled power without responsibility, and assume or have a role of a prosecutor, giving its opinions in between the quasi judicial functions of the various stages of statutory authorities involved in the conduct and conclusion of a disciplinary inquiry, in between the prescribed stages of decision making from the level of Inquiry Officer, to the Disciplinary Authority, to the Appellate Authority, and to the Revisional / Review Authority. Moreover, any such examination of the files and records of a particular disciplinary enquiry case by the Central Vigilance

Commission in between the various statutorily prescribed stages of the disciplinary enquiry, would be behind the back of the delinquent Government Officer, and without giving him an opportunity of being heard. Therefore, the expression of any opinion or advise about the guilt or otherwise of the delinquent by the Central Vigilance Commission is entirely against the Common Law principles of natural justice, as well as being against the rules for the conduct of disciplinary inquiries framed under Article 311 of the Constitution, and also against the Fundamental Rights of the concerned delinquent Government servants under Article 14 of the Constitution of India. The issue raised at para 40 (e) / ante is therefore answered accordingly.

57. The role assumed by the activists and these comments and aspirations of the CVC are wholly welcome, as long as the process and procedure adopted by it remains confined to vigilance investigation, and entrustment of the cases to the investigation agency. After having performed this task, the CVC cannot thereafter be

expected to, or allowed to, perform quasi judicial functions of trying to be involved in the process as prescribed by Art. 311 of the Constitution, for departmental proceedings, being initiated for the dismissal, removal, or reduction in rank etc. of the delinquent Government officials, and also to give any opinion at any stage or level whatsoever regarding the disciplinary inquiry being conducted. The role of the Central Vigilance Commission appears to have been designed by the Legislature more towards tackling the criminality, or to the criminal aspect of the corruption, and it is far removed from the aspect of civil liability of departmental punishment to be imposed by the departmental authorities. CVC would do well if, while trying for enhancing its powers to investigate the cases of corruption, and entrust the cases for investigation to either the Central Bureau of Investigation, or to the newly proposed agency, the office of the CVC keeps away from the progress of and the outcome of the departmental inquiry, which may follow as a result of its recommendations, and refrain from giving any opinion whatsoever, regarding any such departmental inquiry, at any stage of the inquiry whatsoever.

58. It is further observed that the Central Bureau of Investigation also has, in its CBI (Crime) Manual, 2005, provided for having arrangement or tie-up with the State Police, or with the State Level Anti-Corruption or Vigilance set-up, so that, without waiting the Central Bureau of

Investigation to move in,the State Police may take an immediate action in respect of certain circumstances as enumerated in Para 1.11 of Chapter I of the Central Bureau of Investigation Manual, 2005, as follows :

1.11 It has also been agreed that the State Police or Anti Corruption / Vigilance set up may take immediate action in respect of the Central Government Employees in the following circumstances :-

a. Where there is a complaint of demand of bribe by a central government employee and a traphas to be laid to catch such employee red-handed, and there is no time to contact the Superintendent of Police concerned of the CBI, the trap may be laid by the State Police / Anti Corruption or Vigilance set-up and, thereafter, the CBI should be informed immediately and it should be decided in consultation with the CBI whether further investigation should be carried out and completed by the State Police or by the CBI.

b. Where there is likelihood of destruction or suppression of evidence if immediate action is not taken, the State Police / Anti Corruption or Vigilance set-up may take necessary steps to register the case, secure the evidence and, thereafter, hand over the case to the CBI for further investigation.

c. Information about cases involving Central Government employees, who are being investigated by the State Police / Anti

Corruption or Vigilance set-up, should be sent by them to the local CBI branch, Head of the department and / or the office concerned as early as possible but, in any event, before a charge sheet or a final report is submitted.

d. All cases against Central Government employees which are investigated by the State Police / Anti Corruption or Vigilance set up and in which it is necessary to obtain sanction for prosecution from a competent authority of a Central Government Department shall be referred to the competent authority directly under intimation to the CVC.

59. This procedure can be continued to be adopted in respect of the criminality aspect of corruption, but its influence or overlapping with the aspect of departmental proceedings cannot be allowed at any stage whatsoever, in any manner whatsoever. As otherwise it will deprive the departmental authorities of their necessary quasi judicial independence and probity as well as responsibility.

60. A few more points may perhaps require / need to be added here. Many States have created the office of an Ombudsman, or the

Lokayukta, and the Parliament has for consideration before it a Bill introduced before the LokSabha for the introduction of an Omnipotent Central Ombudsman, or Lokpal. One stream of social activists, who are quite vocal in this regard, had even drafted their own parallel Jan Lokpal Bill, and are trying to influence the Parliament through all means fair and foul for their version of the Jan Lokpal Bill alone to be considered and passed by the Parliament. Their objectives and intentions are good, as they believe that such an omni-potent Jan Lokpal would help in curbing corruption in the Government at all levels, and they also believe and state that the people of India in general are behind their version of an omni-potent Jan Lokpal authority being created. The Standing Committee of the Parliament has been recommended for Constitutional Authority status to be given to this upcoming omni-potent Ombudsman even though it had not become a reality till now.

61. However, it may be made clear here that while the task of finding out the cases of corruption, and individual Government servants guilty of corruption, and locating such individuals liable to be held responsible, and trying to prosecute them, which is presently a function of the Vigilance Wing or Sections of the different Ministries and Departments / Organizations of the Union of India, and all the States, can perhaps be entrusted to and performed by such an Ombudsman, a

Lokpal or a Jan Lokpal, either in abrogation of the powers of the CVC, or in addition to the powers already given to the CVC, or by bringing CVC under it. However, it is hoped that before the Parliament proceeds ahead for passing such amendment to the Constitution of India, it would do well for the Government to remind the Parliament that this Nation takes pride in having maintained its purity of purpose in the Common Law principles of natural justice being followed in this country. Lest the basic Constitutional principles are destroyed.

62. But then, even the Lokayuktas at the State level, or the proposed Lokpal / Jan Lokapal at the National level, would have to be very resolutely and consciously kept away from the realm of all the quasi judicial functions associated with conducting and concluding a disciplinary inquiry against the delinquent Government officials, and punishing them only if the guilt of the delinquent Government official is established after the complete statutory process of quasi-judicial functions having been performed by the Inquiry Officer, the Disciplinary Authority, the Appellate Authority, and / or the Revisional Authority, as the case may be, has been gone through. In no case can the Lokayukta at the State level, or the proposed Lokpal or Janlokpal at the Union of India level, be allowed to transgress these limits, and to become, or to try to become, both a prosecutor and a judge.

63. It is a cardinal principle of our Constitution that no authority howsoever highly placed, and no authority howsoever lofty in its objectives, can claim to be the sole judge of its own powers, and to decide as to whether its actions are within such powers, as laid down by the Constitution of India. If a State Lokayukta, or the Central Lokpal/ Jan Lokpalhas to be made powerful, it can have all the powers of detection of corruption and misfeasance on the part of the Government servants, or powers to take steps to suggest to prosecute them. But, they cannot have any powers associated with the process of punishing such cases of corruption / misfeasance, and cannot be involved in the statutorily prescribed process of imposing any penalty on the delinquent Government officials, which process can only be gone through by the prescribed statutory authorities, after having scrupulously followed the rigorous procedure prescribed for holding and concluding the departmental inquiries under the CCS (CCA) Rules, 1965, and other parallel rules at the State level.

64. Such a Lokayukta at the State level, and a Lok Pal / Jan Lokpal at the Central Level, can have a role in prosecuting corrupt officials, and to file complaints, and, perhaps, even assist the prosecution counsel before the trial Courts. But they can have no role at all in departmentally punishing the corrupt officials, and the powers under Article 311 of the Constitution, to dismiss, remove, diminish in rank, or

otherwise impose a penalty, shall have to be continued to be exercised by only the four statutorily prescribed authorities concerned, un-influenced by the Lokayukta/Lokpal/Jan Lokpal as the departmental authorities are engaged to do this Constitutional mandate.

65. One shudders when one reads in the news papers about the suggestion of some over-zealous persons from the so-called Civil Society that it should be proposed that the State level Lokayukta, or the Central Lokpal / Jan Lokpal should have powers to attach the property of delinquent Government officials, and take coercive methods against them, even before and without giving them an opportunity of being heard. One is astonished to see as to the level of deviation from the principles of Common Law, and even the much different principles of Civil Law, as prevalent in the European Continent, which the proponents of such draconian provisions are expousing / proposing. One only hopes that any such suggestion would be nipped in the bud as obnoxious, and shown the contempt which it deserves by the Parliament itself also. Unless water tight compartments are thus secured the Constitutional guarantees of presumption of innocence cannot be upheld.

The Constitutional matrix in India, and the universally accepted Criminal Jurisprudence the world over, specifically stipulates the exclusion of any form of bias. To ensure this, a

separation of the overall functions into investigation, prosecution, and then only Judging, is brought out through various methodologies and vehicles. The only exceptions are when Legislature acts under its Privilege Jurisdiction, and Judiciary acts under its Contempt Jurisdiction. Therefore, processes and procedures in Administrative Law must ensure certain exclusivity in each of the stages of the process, whether by bringing in different organs to bring about this, or by any other adequately reasonable and legal process.

66. One issue which arises is regarding the time from which these observations and directions/orders regarding the role of C.V.C. in departmental proceedings could be made applicable. As was observed by Justice K. Ramaswami in his consenting but clarificatory comments in the Constitution Bench judgment in Managing Director, ECIL, Hyderabad vs. B. Karunakar, (1993) 4 SCC 727 : AIR 1994 SC 1074 : 1994 (1) LLJ 162:JT 1993 (6) S.C.1, in paragraph 67, when judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions, or prospectively to the transactions in future only. It was observed by the Honble Supreme Court that prospective overruling limits the application

of the principle to only the future situations, and excludes the application of the principle to situations which have arisen before the decision was evolved. It was mentioned by the Apex Court that the Supreme Court of the United State of America has consistently held that the American Constitution neither prohibits nor required retrospective effect, and, therefore, it is for the Court to decide, on a balance of all relevant considerations, whether a decision overruling a previous principle should be applied retrospectively or not. It was further observed by the Honble Supreme Court that the benefit of the decision must be given to the party before the Court, though applied otherwise to future cases from that date prospectively, and its benefits may not be extended to the parties whose adjudication had either become final or matters are pending trial or in appeal. In this context, it was observed by the Honble Supreme Court in para 73 of that Constitution Bench judgment as follows:-

73. ..This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its

operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.

67. The Honble Supreme Court has approved the doctrine of prospective overruling where it is imminently conducive to public interest in the cases Bapuram vs. C.C. Jacob, (1999) 3 SCC 36 and in Y.V. Rangaiah vs. J. SreenivasaRao, (1983) 3 SCC 284: AIR 1983 SC 852 : 1983 (2) LLJ 23. Also in the case of Ajeet Singh Singhvi Vs. State of Rajasthan, (1991) Supp.(1) SCC 343 : 1991 (1) SCR 579 : 1991 (2) LLJ 336,it has been laid down by the Honble Supreme Court that the Governments interpretation of its own Rules, and the policy decisions made thereunder should be respected by the Courts and Tribunals in the first instance but on challenge must examine it critically.

68. Therefore we make the following judicial declarations:

1) ***The CVC has no fundamental role to play in the matter of a disciplinary inquiry. Its role is limited to assisting the prosecution alone.***

2) ***Even the UPSC has only an advisory role which is not binding on the Disciplinary Authorities.***

3) ***The Disciplinary Authorities act in a quasi-judicial manner and therefore cannot be subject to the whims and fancies of any other agency as stated above.***

69. Therefore this MA will not lie but the original order is recalled. Registry to take back other original orders tag on this order also along with the original order and issue it to all concerned authorities. As in the reply it is stated that at each step DPC had already met, we direct the respondents to open the sealed cover and do the needful. Applicant to have liberty.

70. A copy of this order to be addressed to:

1) The Cabinet Secretary
2) The Home Secretary
3) The DoPT Secretary
4) The Secretary, UPSC, and
5) The CVC

For their kind information.

71. The MA is dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER

/ksk/