

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application 332/00279/2018

Order Reserved on : 30.01.2019

Order Pronounced on : 06th March, 2019

Hon'ble Ms. Jasmine Ahmed, Member (J)
Hon'ble Mr. Devendra Chaudhry, Member(A)

Capt. Pramod Kumar Bajaj, S/o Late Shri P. D. Bajaj aged about 57 years, R/o , 222, M. G. Road, Lucknow

....Applicant

By Advocate: Applicant in person

Versus

Union of India, through the Chairman CBDT, Department of Revenue, Government of India, North Block, New Delhi-1

.....Respondent

By Advocate: Sri Shatohan Lal and Ms. Mona Singh, ADG, Vigilance, Headquarters-II, New Delhi.

Alongwith

Original Application No. 332/00137/2018
(Reserved on 6.2.2019)

Capt. Pramod Kumar Bajaj, S/o Late Shri P. D. Bajaj aged about 57 years, R/o , 222, M. G. Road, Lucknow

....Applicant

By Advocate: Applicant in person

Versus

1. Union of India, through the Chairman CBDT, Department of Revenue, Government of India, North Block, New Delhi-1.
2. Union of India through the Secretary, Department of Legal Affairs, Government of India, Shastri Bhawan, New Delhi-1

.....Respondents

By Advocate: Sri Shatohan Lal

ORDER

Per Ms. Jasmine Ahmed, Member (J)

The O.A. No. 279 of 2018 was heard on 30.1.2019 while the O.A. No. 137 of 2018 was reserved on 6.2.2019. The applicant,

who was present in person, states that O.A. No. 137 of 2018 may also be clubbed with O.A. No. 279 of 2018 to which no objection has been raised by the respondents' counsel. According with the consent of the parties, a common order is being passed.

2. The applicant has filed O.A. no. 137 of 2018 seeking relief to quash the denial of Vigilance Clearance (In short V.C.) dated 20.4.2018 and later the applicant filed O.A. No. 279 of 2018 praying for quashing of intimation of proposal and all consequential actions and to include his name in the agreed list.

3. The case of the Applicant as argued, in brief, is that the applicant, an Ex-Army Officer, having come victorious in the Civil Services Examination in 1989 and allocated to the 1990 batch of the Indian Revenue Services and with the benefit of earlier military services could rise to the level of Commissioner of Income Tax in early 2012. His career graph includes his empanelment as Joint Secretary to the Government of India in 2016. He had, in 2013 applied for the post of Member, ITAT and was stated to have been placed on the top of the list of 48 selected candidates. On his representation, he was recommended for appointment to the ACC on 15.7.2015 based on vigilance clearance given to him in August, 2013 and again in April, 2015. Still his appointment could not be fructified, although candidates selected but placed in the order of merit below the applicant were appointed.

4. Aggrieved, the applicant submitted a representation to the Ministry of Law, Government of India but failed to get any response and hence approached this Tribunal vide O.A. No. 95/2016 wherein, the Hon'ble Tribunal vide its order dated 10.02.2017 directed the Respondents to resubmit the alleged adverse IB Report before the Selection Board for selection of the ITAT Member within one month from the date of receipt of the order for taking a view with request to appointment of applicant as ITAT Member. However, meanwhile, the then CCIT (Exemptions) being peeved with applicant's filing of above O.A. 95 of 2016 transferred the applicant arbitrarily against which, applicant filed another O.A. No. 373/2016 before this Tribunal and the

Tribunal which vide order dated 16.08.2016/18.08.2016 granted interim stay against the transfer order. The respondents' thereupon filed a Writ No 13546/2018 against the stay of transfer granted by the Hon'ble Tribunal. However, the writ was dismissed by the Hon'ble High Court vide order 14.05.2018.

5. Meanwhile, taking offence on account of the successful stay granted on the transfer order by the Hon'ble Tribunal, the then CCIT (Exemptions) being husband of present DGIT (Vigilance) (since also retired) curtailed the powers of the applicant vide order dated 23.08.2016 with a view to frustrate the effect of the stay order of this Hon'ble Tribunal. However, soon after retirement of the then CCIT (Exemptions), this curtailment was withdrawn by the successor CCIT (Exemptions) vide order dated 27.12.2016.

6. Meanwhile, the respondents challenged the Hon'ble Tribunal's order dated 10.02.2017 through a Writ Petition No.8648/2017 in the Hon'ble High Court, Lucknow Bench. The Writ Petition was dismissed vide order dated 30.05.2017 with directions to the Respondents to get the entire process of reconsideration by the Selection Board (hereinafter referred to as SB) within three months and four weeks thereafter for appropriate action on the recommendations of the SB. The Respondents challenged this order of the Hon'ble High Court in a SLP No 22596/2017 in the Supreme Court but, the SLP was dismissed by the Hon'ble Apex Court vide order dated 15.11.2017 directing reconsideration by the Selection Board as ordered by the Hon'ble High Court's order of 30.05.2017. The applicant has further submitted that since, the Respondents were biased against the applicant from beginning and with the dismissal of the SLP in the Hon'ble Apex Court they could not find any way to prevent the appointment of the applicant as ITAT Member any further, so, an arbitrary inspection of the applicant's office was directed by the DGIT (Vigilance) Ms. Abha Kishore being wife of the now retired CCIT (Exemptions). The personal animosity against the applicant was continued now by the wife as had been done by the husband earlier. That this nexus is further laid bare because the aforesaid inspection was ordered on the basis of a letter dated 15.03.2016 written by her husband, the then CCIT (Exemptions) and that too

(the inspection) after more than one year of issue of the letter. Notwithstanding this biased action, the inspection by the two officials on 29.11.2017 and 30.11.2017 could find only some clerical errors of subordinates of the applicant. However in spite of the insignificant findings in the Inspection, a memo dated 30.01.2018 was issued against the Applicant.

7. Applicant has further submitted that he was apprehensive of action being taken against the applicant w.r.t the arbitrary inspection aforesaid and the memo dated 30.01.2018 issued thereupon. Therefore he filed a Dy. No. 365/2018 (OA No 77/2018) wherein this Hon'ble Tribunal vide order dated 2nd February 2018, directed the respondents to not to finalize the proceedings initiated on the basis of the inspections dated 29/30.11.2017 and further that such proceedings will not create any hurdle in the way of promotion, appointment and deputation prospect of the applicant. That consequently, based on this order and the earlier order of dismissal of SLP of the Respondents by the Hon'ble Apex Court, the Ministry of Law and Justice, Government of India (GoI) issued a letter dated 22.02.2018, directing the Deputy Director, Income Tax (HRD), CBDT, New Delhi to send a fresh vigilance clearance in respect of the Applicant by 27.02.2018 in reference to the CBDT letter of 06.12.2013. However, the Applicant submits that the recommendation was deliberately withheld for no rhyme and reason except to delay the matter and wait for opportune time to harm the applicant. It is with this malicious view that the file concerning VIGILANCE CLEARANCE was sent on 19.03.2018 to the Higher Authority (Member-A) by the DGIT V without any specific recommendation in compliance of the Ministry of Law and Justice order of 22.02.2018 whereupon the Member-A returned it back to DGIT (V) on 22.03.2018 seeking clear recommendation on VIGILANCE CLEARANCE for sending to the Ministry of Law and Justice. Since the DGIT (V) was inter-alia also influenced by other probable candidates apart from having animosity against the applicant personally for reasons best known to the DGIT (V), the VIGILANCE CLEARANCE was kept pending.

8. Applicant submits that, as time was passing by and the response to the letter of Ministry of Law and justice had to be

sent, hence, the Principal DGIT (V) finally did record the Vigilance Clearance of the Applicant on 11.04.2018, that is, **not before a delay** of more than two months after the 02.02.2018 order of the Hon Tribunal in the OA No 77/2018 (Dy No 365/2018) and the time limit set requirement of the Ministry of Law for sending the VIGILANCE CLEARANCE by 27.02.2018. In the VIGILANCE CLEARANCE Report dated 11.04.2018 the officer **was not** placed on the Agreed List (AL) of officers of doubtful integrity. This report was also sent to the Deputy Director HRD in the Income Tax Department/Competent Authority. However, the Respondents DGIT (V) sought a meeting with the CBI representative to consider name of the applicant in the AL and a meeting was held on 19.04.2018, just 8 days after 11.04.2018, when, the favourable report by the same officer was reversed by placing the name of the applicant on the Agreed List in a most arbitrary and vengeful manner and communicated vide letter dated 20.04.2018 from DGIT (V) to the HRD/Competent Authority. The Applicant submits that the name of the Applicant was deliberately placed by the DGIT (V) as proposed from the side of the IT Department and not on the instance of the CBI itself. That, aggrieved against further continuing delay and no action on part of the respondents on the recommendation of the Selection Board headed by Judge of Hon'ble Supreme Court which again reiterated the applicant's name for ITAT member, in its selection meeting of 26.04.2018 as also reversal of vigilance clearance within a period of 09 days by the DGIT (V), the Applicant filed an OA No. 137 of 2018 wherein the Hon'ble Tribunal vide order dated 04.05.2018 ordered that as four weeks was given by the Hon High Court in its order dated 30.05.2017 to take appropriate action on the recommendations of the Selection Board dated 26.04.2018, therefore the respondents are directed to ensure strict compliance of the order of the Hon'ble High Court in letter and spirit by taking appropriate action on the recommendation of the Selection Committee within the stipulated time period based on vigilance clearance issued in 2015 and on 11.04.2018 ignoring the subsequent denial, if any. It was also directed the Respondents shall produce the relevant records on the next date fixed (09.07.2018). That, since the orders of Hon'ble High Court in writ petition No 8648/2017 dated 30.05.2017 were

not complied with inspite of the writ itself being filed by the respondents. Since interim relief was not granted in O.A. No. 77 of 2018 for staying the proceedings, the applicant was forced to file a Writ Petition No (S/B) 13390/2018 on his own seeking compliance of order of the Hon'ble High Court whereupon the Hon'ble High Court vide orders dated 15.05.2018, 30.11.2018 and 04.01.2019 not only confirmed the orders of this Tribunal dated 02.02.2018 and 04.05.2018 but also passed serious strictures against the arbitrary actions of the DGIT(V).

9. It is further submitted that even though not stated in the adverse V.C. report of 20.04.2018 but nevertheless asserted in the Counter Reply and argued by Ld. Respondent Counsel, the reason for withholding V.C. whether concerning his alleged deficiencies w.r.t. frivolous inspections or misplaced assessment of doubtful integrity w.r.t. Learned ITAT Bench Lucknow quashing judicial orders pronounced by him as Commissioner (Exemption), each one of these complaints are more than two years old and they cannot be justifiable reason for withholding VIGILANCE CLEARANCE. This is because any such compliant cannot be kept pending in light of strict guidance vide instructions dated 13.03.1991(Annexure-R-2) and hence the entire exercise of withholding his vigilance clearance is malafide as well as vitiated by the DGIT(V) for unknown and biased reasons. Therefore, the withholding of VIGILANCE CLEARANCE on account of more than two years pending references is unjustifiable and so the Respondents must be directed to issue Vigilance Clearance. Further in the Vigilance Clearance report of 11.04.2018, these complaints were mentioned and yet the applicant was not placed in AL but most maliciously thereafter in the 20.04.2018 report the Vigilance Clearance is withheld and this time without mentioning any specific compliant which by itself (i.e. the non mention of any detail of compliant) is violation of 13.03.1991 guideline mentioned above.

10. The Applicant has got 28 years in IRS and 07 years in Indian Army unblemished APARs and his integrity has never been withheld. Therefore to do so now even when the complaints have

never been investigated or applicant given adequate opportunity to defend himself is clear proof of DGIT (V)/Respondents' biased malafide action and hence also the denial of Vigilance Clearance is unjustified.

11. Therefore, in light of all the above facts and continued malice as well as malafide for unknown reasons, the applicant has argued for quashing of the initiation and all consequential proceedings of the respondents w.r.t inclusion of applicant's name in the Agreed List and to thereby enable the applicant to be appointed as Member ITAT on the basis of latest recommendations of the Selection Board dated 26.04.2018 and earlier Vigilance Clearance of 11.04.2018 and strike down the 20.04.2018 biased report.

12. Per contra, the Respondents have in their counter reply submitted that the vigilance clearance of any officer is granted as per extant rules and regulations governed by the Department of Personnel and Training (DoPT) of the Government of India (GOI). That there is nothing in the rules which would restrict this authority of the respondents and hence the claim of the applicant that the vigilance clearance (VIGILANCE CLEARANCE) status has been changed between 11.04.2018 and 20.04.2018 cannot be upheld. The Vigilance Clearance status has been changed on the basis of the inputs available w.r.t complaints against the applicant with the department and the department is therefore fully justified in changing the Vigilance Clearance status from Not in the Agreed List (AL) to Yes in the AL of officers of doubtful integrity. It is further submitted that in the first instance, when, the Appointment Committee of the Cabinet (ACC) had not approved the appointment of the Applicant in view of IB inputs, the case of the Applicant was put up again before the ACC on the representation of the Applicant dated 01.05.2015 wherein the ACC reiterated its earlier stand of non approval.

Further, as per OM of DoPT dated 14.12.2007 as amended vide dated 21.06.2013, officers whose names figure in the AL are to be denied Vigilance Clearance. Respondents have further submitted that the AL is drawn once a year in a joint meeting

between the Joint Director (Policy) of CBI and the Principal DGIT (V) of the Income Tax Department and so it is wrongly alleged by the applicant, that the Pr. DGIT (V) has included the name of the Applicant in the AL unilaterally. Finally emphasis is made on the fact that the Vigilance Clearance issued on any date reflected the vigilance status as on that date and that the issue of Vigilance Clearance in the past does not imply that an officer gets a right to be granted Vigilance Clearance for all times to come. Therefore, there is no injustice in revising the status of Vigilance Clearance of the applicant between the specified dates. That for the above reasons therefore the Vigilance Clearance has been denied in a lawful unbiased manner.

13. The respondents have further submitted that it is also wrong by the Applicant to allege that there is any malafide in conducting the inspection of the offices of the applicant as the said inspections have been carried out by the DGIT (V) on 29.11.2017/30.11.2017, because, these inspections were done as per instructions in the Vigilance Manual. That as per Para 2.15.1 (i) of the Vigilance Manual 2017, the Vigilance Manual has prescribed that the CVO should conduct regular and surprise inspection in the sensitive area in order to detect if there have been instance of corrupt or improper practices by the public servant. That certain irregularities were found in the said inspections and these inputs inter-alia formed the basis for inclusion of the name of the applicant in the AL. That, as regards the applicant's assertion that inspections dated of 29.11.2017 and 30.11.2017 have been taken into account for assessment of the officer in the year 2018, that is after a delay of several months is not acceptable as the para 12.1 of the Manual of Office Procedure does not limit the period to one month w.r.t. completion of action regarding any complaint against an officer. It is further submitted by the Respondents that the time limit of one month prescribed in the Circular no. F. No. A38012/4/91-V&L of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India dated 13.03.1991 is only for a decision as to whether the complaint involves vigilance angle and for a decision as to whether a complaint is to be entrusted to the CBI for

investigation. There is no time limit as a whole for the entire consideration of any matter and hence the argument of the applicant that the Respondents have taken up the complaint for consideration against the Officer after a large lapse of time is baseless. Further, there were adverse observations against the Applicant by the Hon'ble ITAT, Lucknow Bench w.r.t non application of mind by the applicant in the passing of orders relating to two matters of exemptions to certain private parties namely Fateh Chand Charitable Trust and Sri Ganesh Sewa Samitee of Bahraich, UP. These inputs were also taken into consideration for putting the name of the applicant in the AL.

14. As regards the issue of arbitrary transfer of the Applicant, the charge is vehemently denied and it is submitted that the transfer and posting of officers of the level of the Applicant are decided by a Transfer Placement Committee in the Central Board of Direct Taxes (CBDT) chaired by the Chairman, CBDT with Member (Admin), etc. as Member of the committee who are two rank senior than the CCIT (Exemptions), against whom Applicant has raised malafide intention of transfer. As result, it is not correct of the Applicant to blame the CCIT (Exemptions) for his transfer.

15. It is further submitted that the performance appraisal of an officer and grant of Vigilance Clearance to him are different processes and serve different purposes hence they have been prescribed distinctly and differently and it would be wrong to infer that, if the APAR were considered as unblemished they also include the certification of the officer from the Vigilance Angle. More-so, the Principal DGIT (V) has recused from taking a decision in the matter of the Applicant in view of personal allegation by him against her and so the vigilance status has been recorded in an unbiased manner and sent to the office of DGIT (HRD) in compliance of the order dated 02.02.2018 of the Hon'ble CAT, Lucknow Bench. It is also alleged that the Applicant has enclosed copies of certain secret government communication communicated between the office of Pr. DGIT (V) and DGIT (HRD) which is a matter of serious official misdemeanor.

Therefore in light of all the above submissions, the relief sought by the Applicant is unjustifiable and OA is liable to be dismissed.

16. We have heard the Applicant in person and Learned Counsel for the Respondents at length and perused the material on record carefully.

17. Let us take up the **first claim of the Respondents that the Vigilance Clearance (VIGILANCE CLEARANCE) status can be changed at any time.** Towards this claim, the respondents have argued that grant of Vigilance Clearance is governed by Office Memorandum (OM) issued by Department of Personnel and Training (DoPT) and denial of Vigilance Clearance in the case of the Applicant has been done as per the extant rules and provisions. That, the Vigilance Clearance letter issued on 20.04.2018 indicating the inclusion of the name of the Applicant in the AL reflected the vigilance status of the Applicant as on 20.04.2018 and the Applicant has not appreciated the fact that there could have been change in his vigilance status in the intervening period between 11.04.2018 when his name was not on the AL and 20.04.2018 when his name has been recorded in the AL of Officers of doubtful integrity. The inclusion of the name of the Applicant in the AL has been done on the basis of some complaints against the Applicant. Hence the change in the vigilance status is justifiable. Analysis of above claim and counter claim would reveal that while the respondents have full authority to change the vigilance status of an officer, what is important is to examine as to how and with what rationality, justifiability and reasonableness has the said authority been exercised. This is important as the Hon'ble Supreme Court has time and again in a catena of judgments asserted in no uncertain terms that the executive has to exercise its authority in a just and reasonable manner in performance of its duties more so when they are of quasi judicial nature as in the present case. Therefore, the argument of the respondents as to their supreme unquestioned authority to change the status of vigilance clearance without going into the merits of the *raison d'etre* cannot be accepted point-blank. The test of reasonability has to be passed and the averment of the

respondent is not accepted without analyzing reasonability and fairness.

18. Therefore, it becomes critical that we examine the **reasonability of exercise of authority by the respondents in the act of changing the VIGILANCE CLEARANCE status in the nine days between 11.04.2018 and 20.04.2018**. In order to do so, it will be useful first of all to recall that the Respondents' have during course of arguments and in counter reply raised inter-alia the following observations against the Applicant for withholding his VIGILANCE CLEARANCE:

- (i) Deficiencies found in the office inspections of 29/30.11.2017 of the Applicant.
- (ii) Adverse observations by the ITAT, Lucknow Bench against orders passed by applicant as Commissioner (Exemptions).
- (iii) Allegation of bribery.

All the above find mention in the 11.04.2018 Vigilance Clearance report while not being mentioned at all in report of 20.04.2018. Notwithstanding, since support of these allegation was taken during the course of arguments by Ld. Respondent Counsel, therefore, they need to be critically examined. For this it would be useful to first of all advert to the relief sought by the applicant in O.A. No. 279 of 2018 in its exact wordings. The relevant portions are extracted herein below:

“....(i) To quash the initiation and all consequential proceedings of the Respondents to propose the Applicant’s name for inclusion in the agreed list, as a counterblast to the order dated 02.02.2018 in O.A. 77/2018 of this Hon’ble Tribunal, and/or;

(ii) Any other order which is deemed just and proper in the nature and circumstances of the case be also passed in favour of the applicant in the interest of justice along with the cost of this original application...”

19. In this context therefore, it is important to first of all examine the order dated 02.02.2018 in O.A. No. 77 of 2018 (Dy. No. 365/2018) of this Hon’ble Tribunal. The operative portion of the order is extracted herein below:-

*“.....6. Considering the facts and circumstances, a *prima facie* case of interim relief is made out and the respondent is directed to not to finalize the proceedings initiated on the basis of inspection conducted on 29.11.2017 and 30.11.2017 and such proceedings will not create any hurdle in the way of promotion, appointment and deputation prospect of applicant. The respondent is also directed to produce the relevant record on the next date...”*

As is clear, the above order sets aside the effect of the inspections carried out on 29.11.2017 and 30.11.2017 of the office of the applicant and interim relief was also granted w.r.t. negative effect of the disputed inspections in connection with the promotion, appointment and deputation prospect of the Applicant. The clear conclusion that emerges from the order of this Tribunal is that the Respondents have been directed not to create any hurdle in the way of promotion, appointment and deputation prospect of the Applicant on account of the impugned inspections.

20. The reason for such an unequivocal order stems from the earlier history of the matter for which it is useful to recall that the respondents failed to secure cover of the Hon’ble Supreme court in their SLP challenging the order of the Hon’ble High Court dated 30.05.2017 which upheld the order of this Tribunal dated 10.02.2017 which in turn had directed the respondents in the OA 95/2016 to place the record of the IB report before the Selection Board to take a view of the appropriateness of the candidature of the applicant. The reason why such an order was issued is made crystal clear in para 17 to 23 of the order of this Tribunal dated 10.02.2017. Relevant portions are extracted below:

“.....17. The basic question which needs to be addressed here is: After the selection by the Selection Committee, if something adverse comes to the notice of the Government in the form of IB input what ought to be procedure for dealing with that input.

18. It appears that without obtaining any response from the applicant and without placing it again before the Selection Committee, the applicant has been simply denied appointment. This is contradictory to what was done earlier by the authorities at the time of appointment to these posts in 2010. It has been admitted by the respondents in their reply in Para 26 that in the year 2010, the then ACC had directed the Department of Legal Affairs to request the Selection Committee to re-examine the case of two candidates in the light of IB inputs. In the present case no such direction had been given by the ACC. The counter reply is silent on why the same was not followed or could not be followed in the present case.

19. In UoI & others Vs K.D Batish & Other (2006) 1 SCC 779, the Hon’ble Supreme Court addressed the issue of the scope of judicial review

in the order for appointment of a member of the Central Administrative Tribunal made in consultation with Chief Justice of India. The aggrieved persons were members of the Bar who were candidates for Judicial Member. After their selection by the Selection Committee headed by a sitting Judge of the Supreme Court, at the stage of ACC approval some adverse IB report came in respect of two persons. DoPT placed the entire material regarding the IB report before the Chief Justice of India. After his concurrence, appointment orders were issued excluding these two persons.

20. In Dr. A.K. Doshi Vs UoI CA 1692-1694 of 2001, the matter was regarding appointment of a Member of Company Law Board. In this case, after selection by the Selection Committee, at the stage of ACC approval some adverse material was placed by Secretary, DoPT with respect to one of the person in panel and thus his name was rejected. Taking an adverse view of this process, the Hon'ble Supreme Court held: Thus the appointment can only be in consultation with Chief Justice of India or his nominee. It is for that reason a Selection Committee headed by a nominee of the Chief Justice of India is constituted for the purposes of selecting a Member. All materials, which are relevant, are to be placed before the Selection CommitteeIf in an exceptional case the Appointment Committee feels that certain material which was not available to be considered by the Selection Committee has coming to existence in the mean time, and the material is relevant for the purpose of appointment, then the matter should be placed before the Selection Committee with the additional material for its consideration.

21. In R.S Mittal vs UoI (1995 Supp (2) SCC 230, the matter was regarding the post of Judicial Member, ITAT. The Hon'ble Supreme Court held that when a person has been selected by a Selection Board and when there is a vacancy which can be offered to him keeping in view his merit position, ordinarily there is no justification to ignore him for an appointment and there has to be justifiable reason to decline to appoint a person who is in the select panel.

22. In James K. Joseph vs. Govt. Of India before the Hon'ble High Court of Kerala in W.P. (C) NO. 16915/2005, the applicant had been recommended by the Selection Committee for Member (Administrative) in the Central Administrative Tribunal thereafter some adverse IB report came about his character and antecedents. This was placed before the Selection Committee again which withdrew its recommendation. This was concurred by the Hon'ble Chief Justice of India and, accordingly, he was not appointed.

23. Thus, it is clear that in all such cases when an adverse IB report came about a person already placed in approved list by Selection Committee which is headed by a sitting judge of the Hon'ble Supreme Court, the procedure followed is that this material has been placed before the Hon'ble Chief Justice of India / the Selection Committee. In the present case, the said adverse material seems to be of a private matrimonial dispute which has been amicably settled before the competent legal forum at the highest level. In all fairness, this material ought to have been placed before the Hon'ble Chief Justice of India/ Selection Committee to reconsider whether this is sufficient to deny him appointment....."

21. It will be further useful here to quote extracts of the order of the Hon'ble High Court dated 30.05.2017 as also the orders of the Hon'ble Supreme Court dated 15.11.2017:-

Hon'ble High Court's order dated 30.05.2017.

.....since in our view, Selection Board being a statutory body for recommending name of applicant-respondent for appointment to the post of Member of Income Tax Appellate Tribunal, appropriate procedure would be that aforesaid material should be considered by Selection Board itself at the first instance and a decision be taken by it. In this backdrop, direction given by Tribunal to petitioners to re-submit alleged Intelligence Bureau's report to Selection Board for consideration of additional material and make its recommendation again, accordingly, is wholly justified and warrants no interference.

10. In view thereof, we find no reason to interfere with the impugned judgment.

11. However, since, aforesaid judgment was rendered on 10.02.2017 and almost four months have already passed, hence in these circumstances, we direct petitioners to act in accordance with directions of Tribunal and get entire process of reconsideration by Selection Committee completed within three months from today. Appropriate action and recommendation of Selection Committee be taken within four weeks thereafter....”

Hon'ble Apex Court's order 15.11.2017

.....In our considered opinion, the High Court is justified in affirming the order passed by the Central Administrative Tribunal in directing re-consideration of the case of the first respondent by the Selection Board, as has been stated in paragraph 9 of the impugned judgment and, therefore, there is no justification to interfere with the same.

Needless to say, it will be open to the competent authority to re-constitute the Board.

Resultantly, the Special Leave Petition is accordingly dismissed....”

Thus, the Hon'ble High Court and the Hon'ble Supreme Court have not found any grounds of infirmity w.r.t. the order of this Tribunal dated 10.02.2017 and have, in no uncertain terms directed expeditious consideration of the applicant's case for appointment as ITAT member.

22. Thus in a way after the dismissal of the SLP, the respondents were cornered in a way such that now they had to place the IB report before the Selection Board headed by a sitting judge of the Hon'ble Supreme Court and given the fact that the reason for the IB's adverse finding w.r.t the matrimonial dispute was already settled in the court even as per Respondents' own communication dated 15th July 2015 in para 4 (Annexure-7), wherein it is stated as per extracts hereunder:

“.....that the alleged acts of bigamy against Shri Bajaj emanating from matrimonial dispute is not established...”

It is also noticed that the respondents have not been able to show any substantive grounds adequate enough to withhold the vigilance clearance of the applicant in the context of the said inspections. It is pertinent to mention that the Hon'ble High Court in Writ petition No. 13390 of 2018 has categorically held in its order dated 15.5.2018 that the inspection by DGIT (V) was **without jurisdiction**. Hence, we are unable to accept the conclusion of respondents to withhold his Vigilance Clearance on the basis of the said inspection.

Further, at present, there is no higher Courts' order against order dt. 02.02.2018 of the Tribunal passed in addition to the earlier order dated 10.02.2017. Therefore, we find that, while trying to arrive at a decision on the justifiability of withholding the VIGILANCE CLEARANCE of the Applicant w.r.t. his promotion, appointment and deputation prospect at least on the basis of the said inspections we fail to assure ourselves of any substantive grounds to uphold the denial of VIGILANCE CLEARANCE. This conclusion is further strengthened because the name of the applicant has been recommended again by the Selection Board comprising the Hon'ble Judge of Hon'ble Supreme Court vide Selection Board meeting of 26.04.2018 that is after the inspections of November 2017.

23. For the above reasons therefore, we find that the respondents would be acting unjustifiably in withholding the VIGILANCE CLEARANCE on grounds of some findings in the inspection report which is argued to be as one of the reasons. The greater irony is that the said inspections were not found adequate enough to withhold the VIGILANCE CLEARANCE in the report of 11.04.2018 but the same are not even recorded as any reason at all anywhere in the report of 20.04.2018 although the said issue of inspections going against the applicant have been asserted forcefully in the counter reply filed by the respondents. The extracts of the two reports would make this more clear:

“.....DIRECTORATE GENERAL OF INCOME TAX (VIGILANCE)
2nd Floor, Jawahar Lal Nehru Stadium
New Delhi-110003

F. No. DGIT(V)/NZ/VIGILANCE CLEARANCER/43/17/5216
 Dated: 28.11.2018
 To,

Sh. Vipul Kashyap,
 DCIT (OSD) V&L_I,
 CBDT, New Delhi.

Sub: Seeking the opinion of CGSC regarding production of records in O.A No. 279/2018(Dy. No. 1495 of 2018) filed by Capt. P.K. Bajaj Vs. U.OI & Ors. Before the Hon'ble CAT, Lucknow-Reg.

Ref: 1. Your office letter F. No. C-18011(V)/30/2015-V&L dated 16.11.2018.

Kind reference to the invited above.

I am forwarding the redacted copies of the relevant parts of the Agreed List Part B of the Agreed List pertains to the New additions proposed in the Agreed List for the year 2018 and Part D of the Agreed List pertains to the Final Agreed List for the year 2018. Kindly acknowledge.

(Rukmani Attri)

Encl: As above

JDIT (Vg.) (Hq. Admn. & Coord.)
 New Delhi.

Copy to :

ADG (Vig.)-II for information and records.

Part B: New additions proposed in the Agreed List for 2018 as agreed by Pr. DGIT(Vig.) & CVO, CBDT and joint Director, BI (Policy Division) on 19.04.2018

Zone	S.No.	Civil List Code	Name of the Officer Shri/Ms.	Desgn & Place of Posting	Reason for inclusion

Part D: The Final Agreed List for the year 2018 arrived by Pr. DGIT (Vig.) & CVO CBDT and joint Director (Policy), CBI on 19.04.2018.

Zone	Sr. No.	Civil List Code	Name of the officer Shri/Ms.	Desgn & Place of posting	Reasons
North	33.	90031	P.K. Bajaj	CIT, Lucknow	Complaint under investigation by Department

A.K. Sharma
 Joint Director (Policy), CBI

Abha A. Kishore
 Pr. DGIT(Vigilance) & CVO, CBDT..."

1	Name of the officer	Capt P K Bajaj
2	Father's Name	Late Shri PD Bajaj
3	Date of Birth	26.01.1960
4	Date of Retirement	31.01.2020

5	Date of entry into service	25.01.1993
6	Service in which officer belongs	Indian Revenue Services
7	Position held	

S. No.	Organization (Name in Full)	Designation and place of posting	Administrative/nodal Ministry/Dept. Concerned in case of officer of PSUs etc.	From	To
(i)	Income Tax Department	Addl/CIT Range-10(3)	Ministry of Finance	31.10.2007	07.07.2009
(ii)	Income Tax Department	Addl/JCIT Sr.DR.ITAT Lucknow	Ministry of Finance	10.07.2009	13.02.2012
(iii)	Income Tax Department	CIT Hazaribagh	Ministry of Finance	13.02.2012	07.09.2012
(iv)	Income Tax Department	CIT (Audit) Kanpur	Ministry of Finance	10.09.2012	22.06.2015
(v)	Income Tax Department	CIT (Exemptions) Lucknow	Ministry of Finance	22.06.2015	Till Date

8.	Whether of officer has been placed on the "Agreed List" or List of Officers of Doubtful integrity	NO
9.	Whether any allegation of misconduct involving vigilance angle was examined against the officer during the last 10 years and if so with what results	One COM/VIGILANCE CLEARANCER File no. NZ/VIGILANCE CLEARANCER/43/17 is pending against the officer. In which the main allegation is demand of bribe for registration of trust u/s 12AA and 80 (G) of IT Act. There was also an observation of concern by Hon'ble ITAT Bench Lucknow in respect of quality of orders passed by Sh PK Bajaj as CIT (Exemp) Lucknow. A vigilance inspection was also carried out on 29.11.2017 and 30.11.2017.
10.	Whether any punishment was awarded to the officer during last 10 years and if so the date of imposition and detail of the penalty	NO
11.	Is any disciplinary/criminal proceeding or charge sheet pending against the officer as on date. [If so details to be furnished-including reference no. if any of the commission]	No
12.	Is any action contemplated against the officer as on date (If so details to be furnished.) (*)	NO
13.	Date of filling of latest IPR	05.01.2018

In this matter, the Hon'ble CAT has granted an interim relief vide its order dated 02.02.2018 which states as below:

*“....Considering the facts and circumstances, a *prima facie* case of interim relief is made out and the respondent is directed to not to finalize the proceedings initiated on the basis of inspection conducted on 29.11.2017 and 30.11.2017 and such proceedings will not create any hurdle in the way of promotion, appointment and deputation prospect of applicant. The respondent is also directed to produce the relevant record on the next date. The next date of hearing in this case is 27.03.2018.*

*(Abha A. Kishore)
Pr. DGIT (Vig.)/CVO
Dated 11th April, 2018.....”*

More-so, omission in the 20.04.2018 report of any specific complaint (Singular word ‘complaint’ to be noted) versus strong assertion in the counter reply of more than one complaint is by itself a strange suspect incongruous situation wherein what is asserted in the counter reply is not evident in the report of 20.04.2018 relied upon and neither clarified even during the course of the arguments by the respondent side. For these reasons the applicant’s logic of seeking relief seems justifiable and the reasons advanced by the respondents to change Vigilance Clearance status insofar as they relate to the inspections totally devoid of legal and administrative merit.

24. Let us now take up the assertion of the respondents that apart from the allegedly adverse findings in the inspections of November 2017, there are other justifiable reasons for the reversal of findings on Vigilance Clearance between 20.04.2018 and 11.04.2018 and these relate to alleged demand of bribe by the applicant in a matter concerning refusal to grant tax exemption to a Trust by the Applicant as Commissioner (Exemptions) under section 12AA and 80 (G) of IT Act. This is supported as per respondents’ submission by the observation of Hon’ble ITAT, Lucknow Bench in respect of quality of the order passed by the applicant as Commissioner (Exemptions). Respondents support this contention on the grounds of the letter dated 08.02.2016 issued by the office of CIT Appellate Tribunal, Lucknow (Annexure CR-1) communicating the serious concern expressed by the Hon’ble ITAT, Lucknow Bench in the course of hearing of the appeal in the cases of Fateh Chand Charitable Trust Ganesh Sewa

Samitee of Bahraich, UP against the Applicant's order as Commissioner (Exemptions).

It will be useful to state the relevant portion of the order dated 08.02.2016:

"To,
The Chief Commissioner of Income Tax (Exemptions)
New Delhi.

Sir,

Sub: Serious concern expressed by the Hon'ble ITAT, Lucknow Bench in the course of hearing of ITA No. 673/LKW/2015 in the case of Shri Ganesh Sewa Samiti-Vrs- CIT (Exemptions) and in ITA No. 792/LKW/2015 in the case of M/s Fateh Chand Charitable Trust-Vrs-CIT (Exemptions), Lucknow-reg.

This is to bring to your kind notice that in the course of hearing of all above mentioned cases on 04.02.2016, the Hon'ble ITAT, Lucknow Bench has expressed serious concern over the kind of stereo-typed order being passed by the Ld. Commissioner of Income Tax (Exemptions), Lucknow without any application of mind, totally ignoring the documents filed by the assessee trust and even without providing the copy of material used against them...."

The only point that emerges on examination of the said letter is the observation that the ITAT, Lucknow Bench expressed concern on the **stereotyped** nature of the order being passed by the CIT (Exemptions), Lucknow. This cannot be held to be sufficient ground *prima facie* for withholding the Vigilance Clearance of the applicant and label him as a corrupt officer. It is at best a feature of criticism of skill in delivering a quasi-judicial order rather than anything which cast shadow on his integrity. On the other hand, the Applicant by way of explanation, has filed a copy of the order of the Ld. ITAT Bench which concerns the Sri Ganesh Sewa Samitee of Bahraich, UP and Fateh Chand Charitable Trust (FCCT) cases in which it may be noted at the outset that the actual judgements were passed on dates 06.04.2017 and 04.03.2016 respectively which is later to the letter dated 08.02.2016 relied upon by the respondents; implying thereby, that conclusions were drawn against the officer-applicant merely on the basis of the letter dated 08.02.2016 and the respective authorities did not deem it fit to wait for the judgment to be delivered before issuing adverse remarks against the applicant.

25. Further, it is to be noted that the appeals concerned had been filed by the FCCT against the order of CIT (Exemptions), Lucknow dated 11.01.2016 wherein the CIT (Exemptions) had **cancelled the recognition granted to the FCCT** u/s 80 (G)(5)(vi) of the IT Act. In the appeal, Ld ITAT had struck down the order of applicant passed as Commissioner (Exemptions) and observed as under:

“.....Out of these conditions, the CIT (Exemptions) in his order has not given any finding that the assessee has violated any of these conditions as stipulated u/s 80(G)(5) except that the registration of the trust has been cancelled u/s 12AA(3) of the Act...”

Similarly as regards the other order of the Applicant as CIT (Exemptions) in the Ganesh Sewa Samiti matter, examination of the order dated 04.03.2016 of the Ld. ITAT reveals that certain observations have been made w.r.t. the order of the CIT (Exemptions). The same are reproduced herein below for the clarity:

“.....but the CIT (Exemptions) did not take any pain to look into it and out rightly denied the registration by passing an order on the same date i.e. 01.10.2015. The approach of the CIT (Exemptions) cannot be appreciated....”

On the above appellate orders the applicant has argued that they are in the nature of a judicial process wherein order of Ld. ITAT dated 06.04.2017 has struck down the order of the Applicant which he passed as CIT (Exemptions) vide order dated 11.01.2016. That the appellate orders nowhere cast shadow on personal integrity of the applicant. Therefore they cannot be a strong enough ground for holding the order of the applicant as Commissioner Exemptions as being of corrupt nature and therefore being a good reason for withholding the integrity of the applicant and hence not giving VIGILANCE CLEARANCE.

26. We are inclined to agree to the Applicant's submission that the orders passed by him as CIT (Exemptions) are based on facts as available with him/understood by him and are in the nature of a judicial order which are subject to review like any other order of any competent authority passing an order which may be of judicial nature. It stands to reason that the appellate authority by their superior understanding of the case matters struck down an order by a lower authority. That, mere setting aside cannot be held

to be a ground of corrupt nature. **More importantly**, even by the circuitous imagination there would not easily be a malafide in passing of an order which actually only benefited the Government by way of quashing the exemptions sought by the concerned parties w.r.t. payment of the income tax as revenue to the government and applicant by inference could not have benefited in a pecuniary manner by denial of exemption prayed by the said tax payees.

27. Therefore, it cannot be straightway held that the applicant acted in a corrupt manner in the said cases and so there is a strong enough basis for withholding the VIGILANCE CLEARANCE. Further it is to be noted that the two judicial orders were never thereafter investigated or examined by the respondents as to whether they were emanating from corrupt reasons, and whether the officer had malafide intentions driven by monetary benefits. The Respondents have not been able to produce any follow up w.r.t. inquiry in the said matter leading to a disciplinary proceeding against the Officer. Now, after a lapse of more than two years to take them as basis for doubting the integrity in such a manner as to include the applicant's name in the AL leading to refusal of issue of Vigilance clearance for appointment as ITAT Member seems to be highly unjustifiable. Thus, the respondents' assertion that the observations of the CIT Appellate Tribunal office in the letter dated 08.02.2016 are justifiable grounds to withhold the integrity of the applicant seem to be on thin ice and we cannot allow ourselves to uphold them.

28. The next averment of the respondents' is that it is erroneous on part of the applicant to argue that the decision on the VIGILANCE CLEARANCE was taken by the department/DGIT(V) unilaterally without any inputs from the CBI who are required to be consulted in such matters as per laid down process. That is to imply that there were inputs from CBI also. For this it is important to understand the typical process by which the inclusion of the name of any officer in the Agreed List taken place. On this point, it is not disputed that the process of inclusion of the name in the AL is done on an annual basis in a meeting convened between the Pr. DGIT (V) and the Joint Director (Policy), CBI. During the meeting

either or both sides present cites instances concerning lack of integrity of the officer under assessment and depending on the proposals presented by either side, the record is finalized. Clarifying this further, it was argued by the Applicant that whenever a name is to be considered for being included in the AL, the proposal is either put up from the side of the DGIT (V) or from the side of CBI depending upon the evidence either one of them may have w.r.t. the officer concerned. That, in the present case there was no matter of CBI investigation concerning the Applicant and therefore it could not have been the CBI logically therefore who could have brought forth the name of the Applicant for inclusion in the AL and so it follows that it was the Income Tax Department represented by the DGIT (V) which would have got the applicant's name recorded fully well aware that just nine days ago, in the 11.04.2018 communication the VIGILANCE CLEARANCE was granted by DGIT (V) inspite and despite of certain recorded complaints w.r.t. the Applicant.

This would make it clear that while the name of the applicant is **not** included in the AL vide communication dated 11.04.2018, certain observations are indeed recorded in the assessment. However none of these observations mention any CBI case pending against the applicant. Only Income tax related cases are mentioned. And then, the name of the applicant has NOT been included in the AL by recording 'NO' which is in direct contrast to the recording 'YES' in Vigilance clearance dated 20.4.2018 and this time even without mentioning any specific complaint. No light has been thrown on this even during the course of the arguments by the Ld Respondent Counsel. In the event therefore, it is difficult to uphold the view of the respondents' that it was not them alone who got the name of the applicant recorded in AL and that too this time, that is on 19.04.2018 even without recording any specific remark. We cannot allow ourselves the luxury of believing the respondents' that there are justifiable grounds to change the vigilance status in a fair and justifiable manner without even the clarity of any remarks in the report of 19.04.2018. In fact we are wont to agree with the submission of the applicant that the vigilance status between 11.04.2018 and 20.04.2018 has been changed to the detriment of the applicant without adequate

reasons and is malafide. More-so, that the vigilance status has been changed in **nine days** because of certain complaints which are not even mentioned in the remarks column of the impugned letter of date 20.04.2018. Hence due to lack of any explicit reasons there seems to be little merit in the assertion by the respondents' that the name of the applicant was included in the AL also on behest of CBI and it was not due only to complaints harboured earlier by the department.

29. We may now take up the next argument made by the Respondents that there is no let or hindrance in time limit for decision w.r.t. considering complaints for being recorded in the AL in the context of circular F. No. A38012/4/91-V&L dated 13.03.1991 as averred by the Applicant. Further, that only valid complaints against the applicant have resulted in the withholding of the VIGILANCE CLEARANCE. Relevant extracts of the above circular are extracted herein below to settle these points.

".....F.No. A38012/4/91-V&L
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi 13.3.1991

Sub: Preparation of "Agreed List" of Gazetted Officers suspect integrity guidelines regarding Of "Agreed Lists" of officers of suspect integrity are being prepared in accordance with the instruction No. 130/1/66-A Vd, dated 5.5.66 of the Ministry of Home Affairs, and Instruction No. 321/6/78-AVD dated 4.3.78 of the Department of Personnel Affairs.

2. In pursuance of these instructions, "agreed" lists of suspect officers of the Income Tax Department are being drawn annually at the local level of Commissioners of Income Tax, in consultation with the local officers of the CBI as also by the CVO, CBDT, in consultation with the CBI(GQ). Past experience has shown following deficiencies in preparation and operation of these "agreed lists."

The Commissioners preparing "agreed lists", at the local levels, are often unaware of the purpose as well as the implications of placing an officer on the "agreed lists". Instances are not lacking, where names of officers have been included without serious thoughts. In some cases, names have been included only because the CBI suggested them. In a number of instances, reasons have not been recorded before including the name of a particular officer. On the other hand, officers against whom serious doubts have persisted are not considered for inclusion in these lists. In some CIT charges, not a single officer has been included in the "agreed lists" for years.

(ii) In a number of instances, names of officers are included or excluded from "agreed lists" without the knowledge of the Board as well as the Director of Income Tax (Vig.)

(iii) In many instances, officers whose names are also included in the "agreed lists" remain there for years together without any further action. Even after an officer is taken on the "agreed list" no effort is made to collect materials so as to establish or remove the doubts on the basis of which his name was included in the "agreed list" in the first place. In some cases, such offices have even remained on sensitive posts while continuing to be on the "agreed lists".

3. In order to streamline the departmental work, practices regarding preparation and operations of the "agreed list", the following guidelines are hereby laid-down:-

- Purpose of inclusion in "agreed list"
It needs to be reiterated that as mentioned in the Instruction dated 5.5.66 of the Ministry of Home Affairs, the basic purpose of placing an office on the "agreed list" is to verify cases where complaints and doubts about his integrity have persisted.
- Implications of inclusion in "agreed list".
It also needs to be reiterated that the implication of placing an officer on the "agreed list" is to convey the agreement of the dept to any investigation against him by the CBI, should be prepared with due care and caution and every effort should be made to ensure that the cases of officers whose integrity are seriously suspect, are placed on the "agreed list".
- Reasons of inclusion. Hence forth, in every case where an officer's name is being included in the "agreed list", a gist of the material, on the basis of which this is being done, just invariably be put on record.
- Authority competent to include
- Names of Group B officers may be included in the "agreed list" by the local Commissioners at their own levers after recording reasons and in consultation with the Directorate of Vigilance. A copy of these reasons should invariably be sent to the Directorate of Income Tax (Vigilance) as a secret note for comments before agreeing with the CBI to include the name in the suspect list.
- Names of the Group 'A' officers up to the level of D.Cs.I.T may be included in the "agreed list" by the local commissioners, but only with the prior approval of the Board. In such cases, secrete note containing the reasons for inclusion of an officer's name should be sent to the Directorate of Income Tax(Vigilance) well in advance for securing Board's approval.
- Names of the officers of the level of Cs.I.T and above should not be included in the "agreed list" prepared at local levels. These cases should be included only in the "agreed list" prepared at the central level by the Directorate of Income Tax(Vigilance) with the approval of the CBDT.
- If necessary, the Directorate of Income Tax (Vigilance) and the CBDT may agree to the inclusion of officers below the rank of CIT also in the Central "agreed list" after recording reasons.

(e) Period: Normally, an officer should not remain on the "agreed list" for more than one year on the same ground. However, in exceptional cases, this initial period may be extended by one year each to the maximum of 3 years with the prior approval of the CBDT.

(f) Action on inclusion

- (i) *Once the name of an officer is included in the “agreed list”, he should not be posted to any sensitive post involving public contacts.*
- (ii) *Immediate steps should be taken so as to complete an inspection of the technical work and financial affairs of the offices within 3 months, and the information should be shared with the CBI. Similarly, any further complaint or information coming on record should also be shared with the CBI.*
- (iii) *The information gathered during such inspections should be taken into account in writing the ACRs on the ‘agreed list’.*
- (iv) *On transfer of an officer on the “agreed list” from one IT charge to another IT charge, the secret note as well as the position of further enquiries should be communicated to the concerned CIT.*
- (g) *Exclusion*
The name of an officer once included in the “agreed list” should be deleted only with the prior approval of the Directorate of Income Tax (Vigilance) in cases of Group B officers and of the CBDT in cases of Group A officers. For this purpose, the concerned CsIT may submit a self contained proposal to the Directorate of Income Tax (Vigilance), indicating their reasons well before the time limit mentioned in item (V) above.

*(Taranand)
Director (Vigilance & Litigation)”*

Analyzing of above reveals that it has been cautioned in Para- 2 (i) that “**....instances are not lacking, where names of officers have been included without serious thoughts. It has been further added thatin some cases, names have been included only because the CBI suggested them..**”. Again it is mentioned that “**.....in a number of instances, reasons have not been recorded before including the name of a particular officer...**”

Analyzing these lines, with a bit of little care, reveals the inappropriateness of the inclusion of the name of the Applicant in the report dated 20.04.2018. The lack of reasons in the remarks column seriously lays doubt as the conditions laid down in the aforesaid para- 2(i) are unfulfilled. It is also to be noted in the above wordings that “**.....mere inclusion of a name by mere statement of the CBI**” has been cautioned. In the present case, the averment of the respondents that the name of the Applicant was included in consultation with the CBI is not even

substantiated by any remark in the report, hence cannot be upheld.

Again if the para - 3 (a) is perused, there is need for complaints and doubts about the integrity of the officer to persist as per instructions dated 05.05.1966 of the Ministry of Home Affairs. It may be seen as per analysis of the earlier paras that, whatever complaint has been recorded pertain to the year 2016-2017 (one year only) w.r.t. certain judgments being set-aside in judicial capacity by the Appellate Authority and certain irregularities found in course of inspections. Thus, there is no persistence of any complaint and more-so the complaints have not been taken forward to the next logical steps for conclusions thereof w.r.t. the correctness and strength of the complaints, and them being worthwhile enough to withhold the Vigilance Clearance of the officer concerned.

Para 3 (b) and (c) refer to implications of inclusion in the AL. A reading of it reveals that the circular has cautioned that the list needs to be prepared with due care and a gist of the material, on the basis of which the inclusion done invariably put on record.

30. Again it is mentioned in para -3 (f) (ii) that whenever the name of the officer is put on AL immediate steps should be taken so as to complete the inspection of the technical work and financial affairs of the offices within three months and the information should be shared to CBI. It is also mentioned in Para 3 (f) (iii) that the information so gathered should be taken into account in writing ACRs. As analyzed in the earlier paras, we fail to find any follow up by the respondents in respect of the matters of 2016-17 and the ACR of the officer have been held to be Outstanding nature (for example 8.76 marks in the APAR of 2016.) The Respondents have not been able to show any APAR which would support para 3 (f) (iii) of the circular of 1991 above. Also the Respondents' specious plea that vigilance/integrity issued are recorded only in separate vigilance report is not fully justifiable as in the APARs, there is a specific column w.r.t. certification of integrity by the Reporting Officer which offers specific opportunity to record observations in their report.

However, nowhere have the Respondents' been able to show that this opportunity has been utilized by the Reporting officer during the course of recording APAR of the applicant. Such lack of remarks contributes to the malafide intention of the Respondents' in recording VIGILANCE CLEARANCE vide report dated 19.04.2018.

The Applicant has also filed Annexure A-4 which is a brief of the various cases concerning the officer. It is seen that a number of complaints have been closed on the various dates or on remarks **"No details provided by the Respondents. No query ever raised till date, Fictitious/Pseudo anonymous complaint etc".**

It would be useful to reproduce the Annexure -4 to fortify the facts that there seem to be little grounds with the Respondents to cast doubts on the integrity of the Applicant much less withhold his VIGILANCE CLEARANCE. In fact in one complaint it is alleged that the Applicant had harassed by another officer Sri O. P. Jangre. In this matter the Applicant has pointed that on the contrary the Anti Corruption Bureau of the CBI has at a later date arrested the concerned complainant on charges of corruption. Extracts of the complaints quoted by the Respondents are quoted herein below for clarity:-

Brief of Case.

Apart from the two cases mentioned in the writ petition there are many other cases of complaints against Shri P. K. Bajaj pending in the Vigilance directorate which are as summarized below:

S. No.	Name of officer		status
1.	Sh. P. K. Bajaj Addl CIT, Range 6 (2), Mumbai	Shri O.P. Jangre	Charges of harassment & interference in work by subordinate officer Shri Jangre on Shri P. K. Bajaj Under Examination.
2.	Sh. P. K. Bajaj, CIT E, Lucknow		Closed dated 03.05.2018
3.	Sh. P. K. Bajaj, CIT E, Lucknow	Complaint made by Driving Training and Scientific Research Lucknow in January 2016	Under examination
4.	Sh. P. K. Bajaj, CIT E, Lucknow	Sh. Dharam Veer Kapil IFS Retd Dated 17.10.2017	ID issued dated 13.11.17 responded dt 18.11.17 Under Examination
5.	Sh. P. K. Bajaj, CIT E, Lucknow	Sh. Balesh Singh, through PMOPG/E2017/0597795 dated 17.11.17.	ID issued dated 27.12.17
6.	Sh. P.K. Bajaj,CIT(Exemption), Lucknow	Shri Ashok Verma, Lucknow	ID issued dated 08/04/16.Reminder date 11.05.16. ID neither resp

			nor received back undeli date. Closed dated 19.07.16
7.	Sh. P. K. Bajaj, CIT E, Lucknow	Sh. Jagat Pandey, 28/42,Civil Lines, Bareilly, U.P. Dated 29.06.16.	ID issued dated 03.08.16. Reminder dated 09.09.16 letter received back undeli. Closed dated 07.10.16.
8.	Shri Pramod Bajaj, CIT(Exemption), Lucknow	Sh. Ashish Rastogi, A 70, Gandhi Nagar, Prince Road Muradabad, U.P.	ID issued dated 25.02.16. Reminder dated 11.08.16. neither received back nor responded. Closed dated 29.08.16.
9.	CAPT. P.K. Bajaj Addl. CIT	Smt. Renu Bajaj W/o Capt P. K. Bajaj	Letter dated 28.01.15 to CIT, Ajmer for providing information on case in court matter. A letter to Jaipur for status report dated 20.01.16 & reminder dated 28.09.16 sent.

S. No.	Name of officer		Status	5.Facts as per petitioner
1.	Sh. P. K. Bajaj Addl. CIT,			No explanation ever called for from petitioner in last 13 yeas in this regard. Shri S. K. Jangre was arrested by ACB/CBI on 12.12.15, and is under suspension. (Annexure No. A1).
2	Sh. P. K. Bajaj CIT(E), Lucknow	Blank/	Closed dated 03.05.18	No details mentioned
3.	Sri P.K. Bajaj CIT(E), Lucknow	Complaint made by Driving Training and Scientific Research Lucknow in January 2016	Under Examination	File taken for inspection on 03.02.2016 returned after 17 months on 09.08.2017. with the remarks that this record as no longer require and matter closed by ADG(VIG)(NZ on 10.02.16. (Annexure no. A2) (ii) NBW issued by Ld. CJM Lucknow against complainant (Annexure no. A3)
4.	Sri P.K. Bajaj CIT(E), Lucknow	Sh. Dharm Veer Kapil IFS Rent. Dated 17.10.17	ID issued dt. 13.11.2017 ID responded dt. 18.11.17. under examination	Father in Law of Mrs. Naina Kapil Son, IRS posted earlier in DG(V) office Delhi. (ii) Application rejected because even PAN was not provided in spite of two opportunities given (copy of order as Annexure No. A4)
5.	Sri P.K. Bajaj CIT(E), Lucknow	Sh. Balesh Singh through PMOPG/E/2017/0597795 dt. 17.11.17	ID issued dt.27/12/17	No details provided by Respondents. No.query ever

				raised till date.
6.	Sri P.K. Bajaj CIT(Exempton), Lucknow	Sh. Ashok Verma, Lucknow	ID issued dt. 08/04/16 Reminder dt. 11.05.16 ID neither responded nor received back undelivered till date Closed dt./19.7.16.	Fictitious/Pseudo anonymous complaint. Still connected files taken during inspection on 29.11.2017.
7.	Sri P.K. Bajaj CIT(Exemption), Lucknow	Sh. Jagat Pandey, 28/42 Civil Lines, Bareilly, U.P. Dt. 29.06.16.	ID issued dated 03.08.16 Reminder dt. 09.09.16. ID letter received back undelivered. Closed/dt. 07.10.16.	Fictitious/Pseudo anonymous complaint still connected files taken during inspection on 29.11.2017
8	Sh. Pramod Bajaj CIT(Exemption)Lucknow	Shri Ashish Rastogi, A-70 Gandhi Nagar Prine Road, Moradabad U.P.	ID issued dated 25.02.16 reminder dated 11.05.16. ID neither received back nor responded. Closed Dt/29.08.16	Fictitious/Pseudo anonymous complaint still connected files taken during inspection on 29.11.2017.
9.	Capt. P.K. Bajaj Addl. CIT	Smt. Renu Bajaj W/o Capt P.K. Bajaj	Letter dt. 28.01.15 to CIT, Ajmer for providing information on case in court matter. A letter to Pr. CCIT Jaipur for status report dt. 20.1.16 & reminder dt. 28.09.16 sent	Divorced on 31.05.2008. No query ever raised by DGIT (V) till date but copies of Hon'ble SC/HC orders handover to DGIT (V) on 21.03.2018 (old settled matrimonial dispute), but still kept pending by DGIT(V) (copy as Annexure No. A5)

Note

- **Serial Numbers 2,6,7 and 8 above already shown closed by DGIT (V) but still shown incorrectly as pending.**
- Subject of document filed by respondent incorrectly mentions" Apart from the two cases mentioned in writ petition" since all above 4 cases are mentioned in W.P.

31. On the whole, therefore, there seems to be little justification in the plea of the respondents that there are no time limits for consideration of any matter howsoever old for withholding

integrity of an officer even when the same has not even been appropriately investigated. On merits also there seem little grounds for holding the view that the so called deficiencies found during the course of inspection of the office of the applicant and the observations of the Ld ITAT Bench Lucknow as also other complaints made out against the Applicant support the corrupt nature of the officer. Hence it is unjustifiable to withhold the Vigilance Clearance on the above grounds.

32. The Respondents have also filed additional circulars such as Vigilance Clearance circular No. 3K-DSP-10 dated 07.04.2000, extracts of the Ministry of Home Affairs O.M. No. 130/1/66-AVD dated 05.05.1966, Circular dated 07.04.2000, circular dated 14.08.2000 and circular dated 05.05.1966 to support their right and reasonability in refusing the Vigilance Clearance. Respondents have highlighted para 1 and 2 of the Circular dated 07.04.2000, para-2, 3 and 10 of the circular dated 14.08.2000 and para 6 of the circular 05.05.1966. Relevant paras are extracted herein below for clarity:

Circular dated 07.04.2000

“....1. The procedure for preparing the Agreed List envisage that the Agreed List would be prepared of officers of gazetted status whose honesty or integrity there are complaint, doubts or suspicion, after consultation between the officers of the concerned organizations and the CBI. It also envisage that following action would be taken by the concerned organization and the CBI in respect of the officers appearing on the list:-

- *Closer and more frequent scrutiny and inspection of their work and performance by the Departments concerned, particularly in spheres where there is scope for discretion or for showing favours;*
- *Quite check about their reputation both by the Department and the CBI;*
- *Unobtrusive watch of their contacts, style of living etc. by the CBI;*
- *Secret enquiry by the CBI about their assets and financial resources. The Departments will make available their property returns and other relevant records to the CBI; and*
- *Collection of information by the CBI of specific instances of bribery and corruption practices.*

2. The Commission has observed that the number of cases emerging against the officers appearing on the Agreed List do not commensurate with the public perception about corruption. This could be because of the reason that the CVOs generally regard that it is the CBI's job to keep a watch over the activities of the officers appearing on the list. The CBI, on the other hand, may not be in a position to spare the services of its officers, due to manpower constraints, for keeping a watch over such officers. The

Commission is of the activities of the officers appearing on the Agreed List, will have to be strengthened. The Commission would, therefore, advise that the CVOs should take immediate steps to finalise the Agreed List in consultation with the CBI and forward a copy thereof to the Commission. The Commission also desires that the CVOs may henceforth also take steps, as expected from the CBI, to keep a watch over the activities of the officers appearing on the Agreed List and also on the List of officers of doubtful integrity. The positive results achieved in this regard may be reported to the Commission. Action taken in this regard would be reviewed by the CVIGILANCE CLEARANCE while reviewing the performance of the CVOs..."

Circular dated 14.08.2000

".....2. The criteria for making such lists has been provided in the Ministry of Home Affairs Letter No. 130/1/66-AVD dated 5/5/66 and letter No. 105/1/66-AVD dated 28/10/69. It has been provided in these instructions that the "Agreed list so prepared will remain in force for one year from the date of preparation and officials work/activities/behavior during the period would be watched and the list would be reviewed after this period. The list of officers of doubtful integrity will remain in force for a period of three years.

3. Notwithstanding the extent instructions available on the subject, many organizations do not strictly adhere to the prescribed duration and lists so prepared continue for years together. The Commission also observes that many departments/organizations are either not maintaining such lists or are not reviewing them periodically. Further, officers of doubtful integrity are sometimes placed in sensitive positions. Adequate precautions should be taken in drawing up and maintaining the "Agreed list" and the "list of officers of doubtful integrity" to ensure that they are correctly and objectively prepared and reviewed from time to time.

10. MAINTENANCE & CUSTODY OF THE LISTS: It will be the duty of the Chief Vigilance Officer/Vigilance Officer of the Ministry/Department/Undertaking to maintain those lists up to date. The list will be treated as "SECRET" and the Head of the Ministry /Department/Undertaking will be responsible for its safe custody..."

Circular dated 05.05.1966

".....6. 'Agreed' Lists will be prepared of officers of gazetted status against whose honesty or integrity there are complaints, doubts or suspicions after consultation between the officers of the Departments concerned and of CBI. Expect in regard to Port Trusts, Public Sector Undertakings and Union Territories those lists will be settled by discussion at Delhi between the Head of Department concerned and Add. I.G.P. and the D.I.G. (Spl.) of the CBI. The agreed lists relating to Port Trusts, Public Sector Undertakings and Union Territories will be settled by mutual discussion between the Head of Port Trust or the Public Sector Undertakings or the Chief Secretary of the Union Territory concerned and the D.I.G. of Police C.B.I. and the S.P. of the local Branch of the CBI. To achieve the best result it is important that there should be free and frank exchange of information during these discussions..."

A reading of these circulars would reveal that these are guidelines for inclusion of the name of an officer in the AL. In fact, para 2 of the circular dated 07.04.2000 cautions that ".... a

number of cases emerging do not commensurate with the public perception about corruption.....could be because the CVOs generally regard that it is the CBI's job to keep a watch over the activities of the officers..."

33. What this implies is that the department has to be very careful in including the name of an officer in the AL inspite of possible CBI mentioning a name for inclusion. In the instant case there is no apparent CBI mention but it is only the department which is keen on including the name in the AL as per some unsubstantiated findings which also ironically do not find mention in the 20.04.2018 report. Similarly, para-2 of the 14.08.2000 circular lays down that "...*Agreed list so prepared shall remain in force for one year...*". We find that no list has been prepared w.r.t the officer in 2016, 2017 or before when the cause for same of the allegation now being raked up arose. The 20.04.2018 is the first time that the name of the officer is mentioned in the AL and that too without specification of any complaint or incident which could cast aspersion on the integrity of the applicant. Thus we are at loss as to how to give benefit to the respondents' on their plea concerning the circular dated 14.08.2000. On the contrary in the report dated 11.04.2018 some remarks are made but then the name of the applicant has not been decided to be included in the AL. The whole argument of taking support of circulars is profoundly vague and ill-thought off. Para-6 of circular of MHA dated 05.05.1966 is only a guideline for procedure and in no way exonerates the respondents of arbitrariness in their decision making process for reasons cited above.

34. It would be quite appropriate to quote here the ruling of the Hon'ble Supreme Court in the matter of **A.K. Kraipak Vs. Union of India reported in 1969 (2) SCC 262**. *The Hon'ble Supreme Court has ruled that ".....The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the frame work of the law conferring that power; the*

consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised...”.

35. What this implies is that while the Executive had to be reasonable while exercising its administrative powers in earlier years, but now given the development over the years, these administrative powers have to be exercised with increasingly more transparency and judiciousness as if the administrative powers are akin to quasi-judicial powers. Towards this purpose of the ruling we find that there is a sudden *volte-face* in the Reports of the Respondents between 11.04.2018 and 20.04.2018 regarding Vigilance Clearance for reasons discussed above. Obviously, therefore this exercise of administrative power is palpably not judicious in light of above ruling. It has been observed in various judgments that it is the bounden duty of the executive authority to follow standards set for its actions by which it professes its actions to be judged *as held in Sukhdev Singh v Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421 and then again in Dr. Amarjit Singh Ahluwalia v State of Punjab, (1975) 3 SCC 503.*

36. This implies that if there is a provision for action in a certain way, it is a duty of the concerned authority to follow it in as clear a manner as possible beyond the shadow of doubt so that its actions are judged accordingly.

37. The executive also has to protect itself from bias and malice. The test of likelihood of bias which has been applied in a number of cases is based on the reasonable apprehension of a reasonable man fully cognizant of the facts *[S. Parthasarthi v State of Andhra Pradesh, 1974 (1) SLR 427: 1974 SLJ 286: AIR 1973 SC 2701: 1973 LabIC 1607: 1974 (1) SCR 697: 1974 (3) SCC 459: 1973 (2) LLJ 473.]*

In the present case, Respondents have hardly any provable grounds of judging the Applicant as being corrupt and thereby withhold his Vigilance Clearance. This, therefore, lends itself to bias and malice in their action as discussed in earlier paras.

38. In fact the whole case is a victim of apparent malafide by the respondents for reasons best known to them, wherein, an officer selected in 2014 that is five years ago is still running from pillar to post; from tribunal to high court; from department to court and the respondents have deftly denied justice to him. The Hon'ble High Court in so many orders in various writs etc have upheld continuously the case of the applicant for appointment as ITAT member. The Selection Board has twice recommended the case of the applicant for appointment. The reasons for the alleged initial IB report regarding marital issues is long settled as per department's own admission and in spite of all this the appointment of the applicant as ITAT member is being thwarted time and again.

On the issue of malafide, bias and malice as well as fairness in administrative action taken together, the Hon'ble Apex Court as well as other Courts have further ruled and it would be useful to recount the important rulings here:

“.....Mala fide-Meaning of- The expression ‘mala fide’ is not a meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. [Probodh Sagar v Punjab State Electricity Board, 2000 (2) SCT 829, at p. 833]......The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand, allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

It is trite knowledge that bias is included within the attributes and broader purview of the word ‘malice’.

Bias admittedly negates fairness and reasonableness by reason of which arbitrariness and mala fide motive creep in.....

The concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon

the facts and circumstances of each matter pending scrutiny before the court and no straight jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness. And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed. It is the appreciation of this common man's perception in its proper perspective which would prompt the court to determine the situation as to whether the same is otherwise reasonable or not...."
[State of Punjab v V.K. Khanna, AIR 2001 SC 343: 2000 (Supp.-3) JT 349: 2000 (7) SCALE 731: 2000 (8) Supreme 105: 2001 (2) SCC 330: 2000 (5) SLR 734.]

Malice – Meaning-Malice includes any intent which law deems wrongful. Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin militia means badness, physical or moral-wickedness in disposition or in conduct – not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term 'malice' is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive.

[West Bengal State Electricity Board v Dilip Kumar Ray, AIR 2007 SC 976: 2006 (12) SCC 559: 2007 (1) SCT 385: 2006 (Supp.-9) SCR 554: 2006 (12) SCALE 559: 2007 (2) SLR 814.]

Thus, suffice to it say that the Hon'ble Apex Court and other Courts have ruled in a plethora of judgments that wherever there is bias, it negates fairness and reasonableness which result in arbitrariness and malafide coming into play. While, no straight jacket formula is evolvable, circumstances of the case need to be dwelt upon to settle the matter of an administrative action being reasonable and without malice. We are at pains to realize and hopelessly fail to convince from any angle of examination of the extant circumstances in the present case that the administrative action of judging the VIGILANCE CLEARANCE position of the Applicant in 09 days from 'No' to 'Yes' and that to without explanation on the face of record is justifiable. For various reasons discussed heretofore we find that unexplained bias and malafide seems to run as a common thread across the facts of this case.

39. In conclusion, therefore, the averments of the Respondents that (i) they have unfettered right to include the name of an officer in Yes list in any manner whatsoever, (ii) keep the complaints pending for inquiry or decision for any length of time, (iii) include the name of officers without whispering a word about a complaint

or matter of inquiry in the actual report (as in the case of reports dated 11.04.2018 vs 19.04.2018) and (iv) decide against the Officer unsubstantiated allegations, seem to be highly unjustifiable due to utter lack of documents and logic beyond a clear shadow of doubt. The alleged cases of suspicion on integrity are going abegging for appropriate evidence and hence they cannot stand on merits whatsoever.

40 In sum, therefore, we find it difficult to uphold the contention of the respondents that the vigilance status of the applicant has been assessed to be worthy of being such that it needs to be withheld w.r.t recommendation for appointment as Member ITAT. Therefore, the relief(s) sought by the applicant seems justifiable and the initiation and all consequential proceedings of the respondents' to include the name of the applicant in the agreed list and thereby not granting vigilance clearance for appointment as ITAT Member is liable to be quashed. Accordingly, O.A. No. 137 of 2018 and 279 of 2018 both are allowed and inclusion of the name of the applicant in A.L. and all consequential proceedings as well as denial of Vigilance Clearance are quashed. The respondents are directed to forward the name of the applicant to the appropriate competent authority in view of Hon'ble High Court's order dated 30.5.2017 passed in Writ petition No. 8648 (SB) of 2017 as affirmed by the Hon'ble Supreme Court in its order dated 15.11.2017 within a period of two weeks from the date of receipt of certified copy of this order. There shall be no order as to costs.

(Devendra Chaudhry)

Member (A)

Girish/-

(Jasmine Ahmed)

Member (J)