

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

+ **W.P.(C) 6117/2016**

Reserved on: 11th November, 2016
Date of decision: 30th November, 2016

STATE OF TAMIL NADU

..... Petitioner

Through: Mr. A.S. Chandhiok, Sr. Advocate
with Mr. Sandeep Khurana & Ms. Seemab Ali
Fatima, Advocates.

Versus

UNION OF INDIA AND ANR.

.... Respondent

Through: Mr. Sanjay Jain, ASG with Mr. Dev.
P. Bhardwaj, CGSC, Ms. Anubha Bhardwaj &
Ms. Rakhi Sharma, Advocates for UOI-respondent
No. 1.

Mr. Sudhir Nandrajog, Sr. Advocate with Mr.
Aditya Dewan, Advocate for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

In this writ petition, the State of Tamil Nadu and the Union of India are on the opposite sides. The petitioner-State of Tamil Nadu impugns the order dated 11th May, 2016 passed by the principal bench of the Central Administrative Tribunal, New Delhi, whereby OA No.3682/2015 filed by Archana Ramasundaram, the second respondent before us has been allowed and the charge sheet dated 18th June, 2014 has been quashed and set aside. The first respondent-Union of India is supporting the impugned order and has argued that the charge sheet has been rightly quashed.

2. The petitioner-State has questioned the quashing of the charge-sheet dated 18th June, 2014 issued to the second respondent on the following grounds: (A) the second respondent had preferred an appeal under Rule 16 of the All India Services (Discipline & Appeal) Rules, 1969 dated 12th July, 2014 and supplementary appeal dated 12th August, 2014, challenging the order of suspension and the charge-sheet. The appeal was decided on 30th April, 2015, quashing the suspension order. Relying on Explanation V to Section 11 of the Code of Civil Procedure, 1908, it is urged that non-grant of relief or prayer amounts to rejection; (B) The Tribunal having concluded that the State Government had the jurisdiction and locus to issue the charge sheet dated 18th June, 2014, the same could not have been quashed. The Tribunal has, while quashing the charge-sheet, acted beyond jurisdiction and the power of judicial review. Reliance is placed upon the decisions in *Union of India & Ors. Vs. Ashok Kacker* 1995 (Supp. 1) SCC 180, *State of Punjab and Ors. Vs. Ajit Singh* (1997) 11 SCC 368 and *Subha Kumar Dash vs. University of Delhi and Ors* 2015 (2) AD (Delhi) 583; (C) The charges relating to indiscipline on the part of the senior police officer are grave and serious. No State Government would have tolerated such indiscipline. The charge-sheet should not have been quashed. (D) Challenge to the charge-sheet was barred by limitation, as the charge-sheet was issued on 18th April, 2014 and the OA was filed on 5th October, 2015. Application for condonation of delay was not filed; (E) The Tribunal has erred in relying upon the observations of the Single Judge in the judgment dated 28th September, 2015 in W.P. (C) No.5145/2015 titled *State of Tamil Nadu Vs. Union of India and Anr.*, ignoring the mandate of the Order of the Division Bench in LPA No.806/2015 dated 6th November, 2015.

3. There are several flaws in the aforesaid arguments, which will be brought forth and dealt with at a later stage. We would first refer to the undisputed and unchallenged factual position:

- 3.1 The second respondent is an Indian Police Service (IPS) officer of 1980 Batch. She belong to the Tamil Nadu Cadre.
- 3.2 State of Tamil Nadu vide their communication to the Secretary, Ministry of Home Affairs, Government of India dated 15th October, 2013 had forwarded the willingness application of the second respondent and two others for placing their names in the offer list for appointment on deputation to the Government of India. The letter avers that no disciplinary proceedings/enquiry was pending or contemplated against the second respondent.
- 3.3 With the approval of the competent authority i.e. Appointment Committee of the Cabinet (ACC), the second respondent was appointed on deputation as Additional Director of the Central Bureau of Investigation (CBI) for a period of four years. The appointment was communicated and forwarded amongst others, to the Chief Secretary, Government of Tamil Nadu by the Ministry of Personnel, Public Grievance and Pension, Government of India, vide their letter dated 7th February 2014. The same letter had asked the Ministry of Home Affairs, Government of India to take up the matter with the State of Tamil Nadu to immediately relieve the second respondent of her current position to enable her to join the CBI.
- 3.4 This was followed by letter dated 11th February, 2014, written by the Ministry of Home Affairs to the Chief Secretary,

Government of Tamil Nadu, making reference to the letter dated 7th February, 2014 regarding appointment of the second respondent as an Additional Director in the CBI.

- 3.5 By communication dated 10th February, 2014, the second respondent wrote to the Principal Secretary of the Government of Tamil Nadu that as per the Government of India orders dated 7th February, 2014, she had been posted as the Additional Director in the CBI. The second respondent revealed that she had opted for Central deputation as her aged parents were living in Delhi. There being no immediate young family member to take care of them, she had to often travel to Delhi to look after her parents. She had requested that she be relieved at the earliest.
- 3.6 This was followed by another letter dated 25th February, 2014, written by the second respondent, to the Chief Secretary, Government of Tamil Nadu. In addition to the reasons mentioned in the letter dated 10th February, 2014, the second respondent had stated that empanelment of their batch as Director General in the Government of India was likely to happen within a week and she should be allowed to join immediately to avoid any procedural difficulties. She was apprehensive that model code of conduct was likely to come into effect from 3rd March, 2014.
- 3.7 The first respondent, i.e. the Union of India had similarly written:-

- (i) Letter dated 24th February, 2014 of the Department of Personnel and Training, Government of India to the Chief Secretary, Government of Tamil Nadu stating that the post of Additional Director with CBI had been lying vacant for some time; that the Supreme Court was monitoring the efficiency and functions of the CBI; that there was urgency to fill up the said vacancy and, therefore, the second respondent had to take up her new assignment at the earliest.
- (ii) Letter dated 10th March, 2014, by the Department of Personnel and Training, Government of India to the Chief Secretary, Government of Tamil Nadu, drawing reference to the letter dated 11th February, 2014 that the post of Additional Director in the CBI was lying vacant as the second respondent had not been able to join. The second respondent should be relieved at the earliest for smooth functioning and functional requirements.
- (iii) letter dated 7th April, 2014, by the Department of Personnel and Training, Government of India to the Chief Secretary, Government of Tamil Nadu, referring to the earlier letters and that the second respondent had not yet been relieved to take up the new assignment as Additional Director of the CBI. Her appointment, was crucial for the agency. The Chief Secretary was personally asked to look into the matter to ensure that the

second respondent was relieved without any further delay.

4. The Government of Tamil Nadu, it is accepted and not denied, did not respond to any of the said letters. There was total silence in sending a reply or any form of communication to either Government of India or to the second respondent. The silence had its consequences.

5. On 7th May, 2014, the Ministry of Personnel, Public Grievance and Pensions, Government of India wrote a letter to the second respondent with copy to the Chief Secretary, Government of Tamil Nadu. The body of the said letter reads:-

“The Chief Secretary, Government of Tamil Nadu has been informed of your appointment as Additional Director in the Central Bureau of Investigation (CBI) on deputation basis vide Ministry of Home Affairs letter No.I-21019/05/2012-IPS.III dated 11.2.2014. Ministry of Home Affairs had placed your name in the panel for selection against the post of Additional Director, CBI after your name was forwarded by the State Govt. of Tamil Nadu for being posted under central deputation. You have been appointed with the approval of the Appointments Committee of the Cabinet. The DOPT has also written to the Chief Secretary requesting them to relieve you urgently for taking up the assignment in CBI vide D.O. letters dated 10.3.2014 and 7.4.2014. However, you are yet to assume the charge of Additional Director, CBI.

2. The post of Additional Director, CBI is a high level supervisory rank post. In view of the fact that the Hon’ble Supreme Court has been monitoring several high profile cases being investigated by CBI, keeping this post vacant for a long time has not been viewed favourably by the Director, CBI. Hence, Director, CBI has been taking up with Secretary, DOPT, several times requesting your early joining in CBI.

3. In view of the fact that your name has been forwarded by the State Government of Tamil Nadu; you have been appointed by the ACC; such appointment has been communicated to the State Govt. by our cadre controlling authority; several reminders have been given by DOPT to the State Govt. and the urgency for filling up this vacancy as made out by the Director, CBI; you are requested to assume your charge as Additional Director, CBI immediately. ”

6. The second respondent, acted as directed, left her post as the Director General of Police and Chairperson, Tamil Nadu Uniformed Services Recruitment Board and joined as the Additional Director, CBI, but not without writing the letter dated 7th May, 2014 to the Chief Secretary, Government of Tamil Nadu, referring to her appointment as the Additional Director, CBI, and the earlier communications of the Government of India to the Government of Tamil Nadu and her representation to the State Government for relieving her at the earliest. The second respondent averred that she had called on the Chief Secretary and the Principal Home Secretary several times, yet the State Government had failed to respond in the three months. She was getting herself relieved to assume charge as Additional Director, CBI. A copy of this letter was sent to the Additional Director General of Police and the member of the Tamil Nadu Uniformed Services Recruitment Board. By another letter of the same date, the second respondent had informed the Additional Director General of Police and member of the Tamil Nadu Uniformed Services Recruitment Board that she was “getting” relieved as Chairperson of Tamil Nadu Uniformed Services Recruitment Board and proceeding to New Delhi to assume charge as Additional Director, CBI.

7. The State Government, which was in slumber and maintaining stupor, responded with alacrity by issuing order dated 8th May, 2014 under signature of the Chief Secretary to the Government of Tamil Nadu that disciplinary proceedings against second respondent were contemplated and the Government of Tamil Nadu in exercise of power conferred under clause (a) of sub-rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, had placed the second respondent, Director General of Police/Chairperson, Tamil Nadu Informed Services Recruitment Board, under suspension with immediate effect. During the period the suspension order would remain in force, the headquarters of the second respondent shall be Chennai. Copy of this order was also sent to the Secretary, Government of India, Ministry of Home Affairs, New Delhi. The Chief Secretary to the State Government also wrote to the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions stating that the second respondent had addressed a letter informing the Chief Secretary that she was proceeding to Delhi to assume charge as Additional Director, CBI. This act was a very serious misdemeanour on the second respondent's part and, therefore, she had been placed under suspension. The Government of India was requested not to permit the second respondent to assume charge as the Additional Director, CBI and, in case, she had already assumed charge on the said post, it would be *non est*. She should be immediately directed to return to the headquarters in Chennai.

8. The Government of India by their communication dated 16th May, 2014, responded, contradicting the State Government and contested the letter dated 8th May, 2014. This letter sets out the facts and records that the Central Government by their letter dated 7th May, 2014 had asked the second

respondent to join the post of Additional Director, CBI immediately. The second respondent had responded by joining the said post on 8th May, 2014 (forenoon) and a letter had been sent by the Department (the Government of India) to the Government of Tamil Nadu on 9th May, 2014. This letter also refers to CWP No.309/2014 titled *Vineet Narain Vs. Union of India & Ors.* and the order dated 9th May, 2014 passed by the Supreme Court taking note of the fact that the second respondent had joined as Additional Director, CBI. In the end, the letter records that in terms of the position explained, the Government of India was unable to consider the request of the Government of Tamil Nadu.

9. The Government of Tamil Nadu thereafter wrote the letter dated 20th May, 2014 to the Secretary, Department of Personnel and Training stating that soon after receipt of letter dated 7th February, 2014, the media had reported that the Central Vigilance Commission had not recommended the second petitioner's name for appointment. Her appointment was arbitrary and in contravention of the procedure laid down in the Central Vigilance Commission Act and the Delhi Special Police Establishment Act. The media reports had referred to one Vineet Narain, a journalist and social activist who had stated in press interviews that he would question the selection process of appointment of the second respondent. They had learnt that Vineet Narain had filed a writ petition on 29th March, 2014 in the Supreme Court, which was listed on 21st April, 2014 and adjourned for hearing to 28th April, 2014. On the said date the Supreme Court had directed issue of notice returnable on 9th May, 2014. On 9th May, 2014, after hearing the counsel for the Union of India and the second respondent, the Supreme Court had restrained the Union of India from allowing the second respondent to discharge functions

as Additional Director, CBI till 14th July, 2014. The Supreme Court had observed that the said order was being passed as a strong case had been made out for grant of interim injunction. The second respondent had acted contrary to the rules and practice by signing the relieving form of her own accord. She had left the headquarters without having received any relieving order or permission from the State Government and without any intimation to the competent authority. The second respondent's conduct was unbefitting her rank and status as Director General of Police and amounts to gross misdemeanour and misconduct. Such acts of impropriety and wilful disobedience could not be tolerated. Indiscipline in the service, particularly at the highest level of a uniformed force must be viewed seriously. Assertion was made that self relieving appeared to be a calculated and premeditated action in an attempt to get over any adverse order of the Supreme Court in the hearing which was scheduled on 9th May, 2014. It was alleged that the Department of Personnel and Training, Government of India had played a direct role in aiding and assisting the second respondent, a senior member of the All India Services to flout the established procedure.

10. On 16th August, 2014, disciplinary proceedings were initiated against the second respondent on the following articles of charge:-

“Charge-1

That you Tmt. Archana Ramasundaram, IPS while serving in the affairs of the Government of Tamil Nadu, deserted the post of Chairperson, Tamil Nadu Uniformed Services Recruitment Board, Chennai on -07.05.2014 and left headquarters to proceed to assume charge as Additional Director, Central Bureau of Investigation, New Delhi without getting relieving orders of the Government of Tamil Nadu, and without properly handing over the charge of the post of Chairperson, Tamil Nadu Uniformed Services

Recruitment Board. Thus, you have conducted yourself in a manner unbecoming of a member of the Service and failed to maintain absolute integrity and devotion to duty, violating sub-rule (1) of rule 3 of the All India Services (Conduct) Rules, 1968.

Charge-2

That you, Tmt. Archana Ramasundaram, IPS while serving in the affairs of the Government of Tamil Nadu, deserted the post of Chairperson, Tamil Nadu Uniformed Services Recruitment Board, Chennai, have signed the relieving form on your own accord without having received any without intimation to the competent authority, left headquarters without due permission. Thus, you have conducted yourself in a manner unbecoming of a member of the Service and failed to maintain absolute integrity and devotion to duty, violating sub-rule (1) or rule 3 of the All India Services (Conduct) Rules, 1968.”

11. The second respondent preferred an appeal petition dated 12th July, 2014 under Rule 16(1) of the All India Service (Discipline and Appeal) Rules, 1969 before the Ministry of Home Affairs, Government of India, against her suspension. On 12th August, 2016, she preferred a supplementary appeal in furtherance of appeal filed on 12th July, 2014. The State Government responded by sending their comments on 16th August, 2014. The Government of India by their communication dated 28th November, 2014 had asked for further comments from the State Government, which were submitted by the State Government vide letter dated 10th December, 2014.

12. By order dated 30th April, 2015, Government of India, Ministry of Home Affairs, allowed the appeal of the second respondent and the suspension order issued by the Government of Tamil Nadu was set aside on

the ground that the State Government had no control or jurisdiction over the second respondent as on 8th May, 2014, as she had already joined the CBI. We shall subsequently refer to the contents of this order. However, at this stage, we would like to notice as a matter of fact that the Central Government did not interfere or quash the charge sheet dated 18th June, 2014 issued by the State Government.

13. The State of Tamil Nadu filed W.P. (C) No. 5145/2015 challenging and questioning the order dated 30th April, 2015 passed by the Ministry of Home Affairs quashing the suspension order dated 8th May, 2014. Other prayers were that the second respondent should be restrained from discharging duties as Additional Director, CBI and should be asked to participate in the enquiry being conducted against her with respect to the charge sheet filed. The Single Judge dismissed the writ petition holding that there was no merit in the same as the second respondent was not serving the State Government on 8th May, 2014. Thus, the State Government had lacked *locus standi* to place her under suspension. Further, if there was any difference of opinion, the view of the Central Government as per the Rules would prevail. This decision also records that the subject matter of the writ petition was the order dated 30th April, 2015 i.e. the order setting aside the suspension of the second respondent and the parties had conceded that this order did not relate to articles of charges and disciplinary proceedings.

14. The State Government thereafter preferred LPA No. 806/2015, which was dismissed on 6th November, 2015, recording that the Central Government has the appellate/supervisory jurisdiction over the members of the All India Services. This order further records as under:-

“This Court is of the opinion that the observations with regard to locus have to be understood in the context of the

circumstances alone, i.e. the power of the Central Government to impose suspension under Rule 16. It cannot be read as, in any manner, prejudging the powers of the State to initiate disciplinary proceedings or the lack of such power as is contended by the second respondent in the present case, because this is the subject matter of the proceedings before the Central Administrative Tribunal.

All rights and contentions of the parties in that regard are expressly reserved and kept open. Nothing stated in the impugned order shall be construed as reflecting the merits of such contention.

Since the State had confined its submissions with respect to the above limited aspect alone, nothing further survives in the appeal. It is accordingly disposed of.”

A reading of the aforesaid quotation would show that the State Government had given up the challenge and contest to the quashing of the order of suspension. The Division Bench had clarified that the observations regarding locus (i.e locus of the Central Government) had to be understood in the context of the power of the Central Government under Rule 16 of the All India Service (Discipline and Appeal) Rules, 1969 and would not in any manner be read as prejudging the powers of the State to initiate disciplinary proceedings or lack of such power, because the disciplinary proceedings were the subject matter of challenge before the Central Administrative Tribunal.

15. We would now deal with the contentions raised by the petitioner i.e. Government of Tamil Nadu/State of Tamil Nadu. We have already quoted the observations of the Division Bench in the order dated 6th November, 2015 passed in LPA No.806/2015. The said intra-Court appeal was preferred by the State Government against the decision of the Single Judge rejecting the challenge to the order dated 30th April, 2015 passed by the

Central Government quashing and setting aside the suspension order. The subject-matter was the suspension order passed in anticipation of the disciplinary proceeding. A reading of the order passed by the Single Judge would show that the State Government had raised several issues including the issue of propriety and the conduct of the second respondent, which had, as per the State Government, justified the order of suspension. Pertinently, the Central Government while quashing the order of suspension passed by the State Government vide order dated 30th April, 2015 had referred to the past history in detail starting with the letter dated 15th October, 2013 written by the Government of Tamil Nadu forwarding the willingness application of the second respondent for appointment on deputation basis in the Central Government and the letter dated 7th May, 2014, written by the Central Government asking the second respondent to take charge as Additional Director, CBI and the subsequent correspondences. This order in paragraphs 15 to 17 records as under:-

“15. AND WHEREAS, the Central Government have observed that Smt.Archana Ramasundaram was appointed to the post of Additional Director, CBI after following due procedure. Being the Administrative Ministry / Department for CBI, the DOP&T requested the State Government several times to relieve her in order to assume charge in CBI. However, the State Government did not relieve her. Finally, DOP&T, in view of the instructions regarding implementation of ACC decisions within a month, vide its letter dated 7.5.2014, requested Smt.Archana Ramasundaram to assume the charge of Additional Director, CBI immediately. In compliance of the DOP&T's aforesaid letter dated 7.5.2014, Smt.Archana Ramasundaram assumed the charge of Additional Director, CBI, New Delhi w.e.f. 8.5.2014 (Forenoon);

16. AND WHEREAS, the Central Government have also observed that Smt.Archana Ramasundaram joined CBI in the forenoon of 8th May, 2014 and as such she was no longer under the administrative control of the State Government. The Hon'ble Supreme Court in its order of 09-05-2014 in Vinit Narain's case recorded the factum of the officer joining the post of Additional Director CBI. The Central Government also observed that there was a difference of opinion whether the State Government could place her under suspension or they required to ask DOP&T to do so. Since the officer had joined the CBI on Central deputation on 8.5.2014, the Ministry of Home Affairs under proviso to Rule 3(1) (b) of the AIS (D&A) Rules, 1969 decides that the State Government had no jurisdiction to place her under suspension;

17. AND NOW, THEREFORE, after due consideration of the appeal submitted by the officer, comments furnished by the State Government records available, comments of the DOP&T and the advice of the Learned Attorney General of India, the Competent Authority in the Ministry of Home Affairs, in exercise of the powers conferred under Rule 19(2) of the All India Services (Discipline & Appeal) Rules, 1969 read with Rule 3(1) and Rule 17 of the All India Services (Discipline & Appeal) Rules, 1969 allows the appeal preferred by Smt.Archana Ramasundaram, IPS (TN : 1980) and sets aside the order of suspension dated 08.05.2014 issued by the State Government. It is ordered accordingly.”

16. Therefore, it cannot be denied that there was, to some extent examination of the conduct of the parties on merits, which in the present case are Government of India, State of Tamil Nadu and the second respondent. However, this would not be a factor or ground for us to dismiss the present writ petition, for we have not proceeded on the said basis.

17. We have encapsulated the correspondence and their contents as averred without comments and observations, except the reticence of the State Government between 7th February, 2014 and 8th May, 2014 We have quoted the order dated 30th April, 2015 passed by the Central Government quashing the suspension order, referred to the order of the single judge dismissing the writ petition filed by the State of Tamil Nadu and the order passed by the Division Bench in the appeal preferred by the State of Tamil Nadu challenging the order dated 28th September, 2015.

18. Reliance placed by the State of Tamil Nadu on explanation (V) to Section 11 of the CPC is misconceived, obscure and farcical. The decisions of the Single judge and the Division Bench in W.P. (C) No.5145/2015 and LPA 806/2015 respectively would show that the question of challenge to the charge sheet was left open. The reason was that the Central Government in an appeal under Rule 16 of the All-India Services (Discipline and Appeal) Rules, 1969 had examined the validity of the order of suspension, and not validity of charge sheet under Rule 3 of the All-India Services (Conduct) Rules, 1968. The submission that the second respondent had questioned the validity of the charge sheet under Rule 16, but the issue was not decided and therefore, the prayer is deemed to be dismissed and could not have been raised before the Tribunal by the second respondent in OA 3682/2015 must be soundly and affirmatively rejected. The second respondent had the right to approach the Tribunal for quashing of the charge sheet issued by the State of Tamil Nadu and in accordance with law the said right was exercised. The Government of India was a party to the said OA along with State of Tamil Nadu. The order dated 30.4.2015 passed by the Union of India quashing the suspension order was before the Tribunal.

19. The plea that the original application should have been dismissed on the ground of limitation is again unfounded and baseless. The State of Tamil Nadu while arguing the first contention has urged that the second respondent had questioned the validity of the charge sheet in two representations while questioning the suspension memo. The appeal preferred by the second respondent was under Rule 16 of the All-India Services (Discipline and Appeal) Rules, 1969 was decided on 30.4.2015. The second respondent had filed the OA 3682/2015 in the Tribunal on 5.10.2015. If we take the limitation period as beginning or commencing from 30.4.2015, the OA was filed within time.

20. The State of Tamil Nadu submits that the charge sheet was issued on 18.6.2014, whereas the OA challenging the charge sheet was filed on 5.10.2015. Thus, it is urged that the OA was filed more than one year after the issue of charge sheet and beyond the limitation period prescribed under Section 21 (i) (a) of the Administrative Tribunals Act, 1985 i.e. one year from the date on which the final order was made. It was time barred by about four months. However, clause (b) to sub-Section (1) to Section 21 states that where any appeal or representation mentioned in clause (b) to sub-Section (2) of Section 20 has been made, an OA can be filed six months thereafter or within one year of the expiry of the said period of six months. It is apparent that the second respondent was proceeding on the basis of wrong legal advice and assumption that the Central Government was competent to pass an order quashing the charge sheet. Representations against quashing of charge sheet were made to the Central Government in the form of an appeal under Rule 16 of the All-India Services (Discipline

and Appeal) Rules, 1969. They were not maintainable, for Rule 16 does not empower the Central Government to quash the charge sheet.

21. Thus, we would accept the argument that the OA was barred by limitation, albeit it is apparent that necessary pleadings explaining the delay were made in the OA itself which was set out and referred to the relevant facts. We would hesitate and not remit the matter to the Tribunal for this reason, when the explanation and reasons of the delay are apparent and obvious. The Supreme Court in *Bhagmal & Ors. Vs. Kunwar Lal & Ors.*, AIR 2010 SC 2991, on the question of absence of application for condonation of delay, has observed as under:-

"12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken

the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice. Here was a party which bona fide believed the assurance given in the compromise panchnama that Respondent 1-plaintiff would get his suit withdrawn or dismissed. The said compromise panchnama was made before the elders of the village. Writing was also effected, displaying that compromise. The witnesses were also examined. Under such circumstances, the non-attendance of the appellant-defendants, which was proved in the further proceedings, was quite justifiable. The appellant-defendants, when ultimately came to know about the decree, had moved the application within 30 days. In our opinion that was sufficient."

We would clarify that as a rule the Tribunal should invariably insist on an application being filed.

22. This brings us to the key or the core issue on whether the Tribunal was justified and legally correct in quashing the charge sheet at the initial state. There are precedents that the charge sheet should not be quashed at the initial stage if it has been issued by an incumbent or authority which does has jurisdiction. Invariably, challenges to the charge sheets are not entertained as the officer would have full opportunity to reply to the charge sheet and thereafter invite the decision of the disciplinary authority. In *State of Punjab & Ors. vs. Ajit Singh*, (1997) 11 SCC 368, the Supreme Court cautioned that the courts while examining the charge sheet, should not go into the merits or demerits of the allegations as the charges are yet to be proved by evidence which has to be adduced in the disciplinary proceedings, nor should the Court accept the explanation offered by the employee and

proceed on the basis there was no merit in the charge sheet. The allegations are based upon documents would have to be produced in evidence before the charges in the disciplinary proceedings are proved. The aforesaid dictums are too well settled. The Single judge of this court in ***Subha Kumar Dash vs. University of Delhi and Ors***; W.P. (C) No.943/2015, decided on 30.1.2015 while recording that disciplinary proceedings can be challenged at the initial stage on limited ground of lack of authority, had opined that the principles akin to Order VII Rule 11 CPC may be applied and when on admitted facts the charge sheet does not disclose cause of action, it can be quashed. Without expressing any opinion on the said ratio, we would refer to only one judgment of the Supreme Court in ***State of Punjab Vs. V.K. Khanna***; (2001) 2 SCC 330. Referring to the concept of fairness in administrative action, it was observed that a bias would include in its attributes the broader view of the word ‘malice’ which in common acceptance means and implies “spite” or “ill-will”. The courts intervene wherever there is miscarriage of justice and there is sufficient cogent evidence to record the said conclusion as a matter of fact. Referring to the legal position, it was elucidated as under :-

“33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which

should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.”

Malice in law must be distinguished from mala fides, for the former term is more akin to lack of good faith. It does not impute moral obliquity. It should not be treated as apposite of honesty, for it refers to lack of legitimate reasons.

24. The aforesaid precept advocating non-intervention is predicated on the principle that liberty to err is inherent in all discretionary powers. A lapse, if any, of this nature can be rectified during the departmental proceedings which are concerned with the truth or character of the charges. Ascertaining truth is the *primary* function and objective for initiating proceedings. Thus show cause notice or charge-sheet is not finally determinative and gives full range of choices to the deciding authority. However, it would be incorrect to urge and state that unless plea of *coram non judice* is raised and is of substance, challenge to charge-sheet is non-inquirable. Rule of law does not accept unfettered discretion for all discretions must be exercised in a reasonable manner and abuse of power which causes injustice can be corrected, whatever be the stage, though the test and parameters at each stage could be different. When the initiation *per se*, even when there is no statutory pre-condition, is predicated on caprice, absurdity, is for the

illegitimate motives and purpose or where the charge is outrageous and in defiance of logic, interference at the initial stage would be justified.

25. The historical distinction between error of law apparent on the face of record and other errors of law may not be totally relevant as the doctrine of *ultra vires* in administrative law is now established. Nevertheless, when *ex-facie* the charge-sheet is found to be vitiated, the said challenge cannot be ignored and rejected.

26. In the present litigation, where we have the State of Tamil Nadu and the Union of India on the opposing sides, is by no means an ordinary and congenital case but one wherein the judicial scrutiny has to be with care and caution so as not to be unjust and unfair to them and the employee, i.e., the two authorities or governments and the second respondent. The Union of India states and has been candid and forthright in asserting that the second respondent has followed their directions and instructions in leaving the State of Tamil Nadu and submitting the joining report as an Additional Director in the CBI. In fact as per them, the second respondent had no option, but to abide their directions.

27. In the given circumstances, it would not be fair and proper for this court to be oblivious and ignore the precarious position of the second respondent, who had to follow the orders of the first respondent and therefore incur acrimony and consequently disciplinary proceedings on the present charge sheet.

28. Rule 6 (1) of the Indian Police Service (Cadre) Rules, 1954 reads as under :-

“6. Deputation of cadre officers. -- 6(1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government, be

deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not which is wholly or substantially owned or controlled by the Central Government or by another State Government.

Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government.”

The aforesaid rule stipulates that the Indian Police Service with the concurrence of the State Government or Governments and the Central Government can be deputed for service under the Central Government or other State Government etc. It further stipulates that in case of disagreement, the matter will be decided by the Central Government and the State Government or Governments shall give effect to the decision of the Central Government. The aforesaid provision gives primacy to the Central Government when there is a dispute relating to the matter of concurrence of the State Governments/Governments or the Central Government. In this case, it is correct that the matter did not pertain to concurrence but one cannot forget the fact that the Ministry of Home Affairs is the cadre controlling authority of IPS officers. The Department of Personnel and Training is the administrative ministry. In the present case, the State of Tamil Nadu had expressed its willingness and had forwarded the second respondent's name for deputation to the Central Government on 15.10.2013. The State Government did not write any letter thereafter withdrawing their concurrence. The languid conduct of the State Government from 7.2.2014 till 7.5.2014, without withdrawing their concurrence, had imploded. They

had tried to obstruct and prevent the Central Government's appointment by refusing to relieve the second respondent and let her join the posting. It is in this context we would read and understand the letter written by the Central Government/Union of India on 7.5.2014.

29. We are not stating that whenever there is a conflict or difference of opinion between the Union of India and the State, the former's direction or opinion should be accepted and the latter's rejected. The facts elucidated above, affirm without doubt that the State Government had kept quiet and maintained stony silence in spite of repeated letters of request by the Union of India to relieve the second respondent to join the post of the Additional Director. The State Government responded for the first time only after the second respondent in terms of the directions issued by the Union of India in the letter dated 7.5.2014 had relieved herself and submitted papers for joining as Additional Director, CBI. On repeatedly being asked why the State Government had not responded to the several representations written by the Union of India till 7.5.2014, the only response was that there were elections in the State of Tamil Nadu from 3.3.2014 and therefore, the services of the second respondent were required. On being questioned whether the said reason is recorded in the file or communication, the State Government has been unable to give an answer. It was urged that the second respondent in her letter dated 25.2.2014 had herself accepted that due to the election, the code of conduct was likely to come into operation on 3.3.2014. The said explanation is nothing but imagination and ingenuity. It is not to be even found recorded in the elaborate letter dated 20.5.2014. This letter or noting only refers to the writ petition which was filed by Vineet Narain. We have dealt with the said aspect and noticed that the application and the writ

petition was filed much later. This was not the propelling reason. The State Government has failed to set out and explain the reason and therefore, their conduct fall short of being reasonable. In the legal sense it would qualify as legal malice. This had prompted and was the motive for issue of the charge sheet.

30. Reliance placed on the letter dated 20th May, 2014 on the proceedings in the Supreme Court is misconceived and is unacceptable. The application questioning the appointment of the second respondent as Additional Director, CBI for want of clearance and no objection from the Central Vigilance Commission was raised and questioned by way of an application on 29th March, 2014. The first letter written by the Central Government to the State Government was on 7th February, 2014, nearly 50 days before the said petition was filed. The date on which the State Government came to know about the said petition is not indicated. The State Government did not write any letter claiming that the second respondent should not be relieved for being appointed as Additional Director, CBI as her appointment to the said post was under question. The application questioning the appointment of the second respondent had come up for hearing before the Supreme Court on 21st April, 2014, when it was adjourned for hearing on 28th April, 2014. On 28th April, 2014, notice was directed to be issued for 9th May, 2014. On 9th May, 2014, it was noticed that the second respondent had already joined the post of Additional Director, CBI, albeit having regard to the statutory provision of the Delhi Special Police Establishment Act with regard to appointment of officers to the posts of the level of Superintendent of Police and above, except Director, and the facts emerging from the available material, it was observed, prima facie a strong case had been made for grant

of interim relief. It was directed that the second respondent shall not discharge the functions of Additional Director, CBI till the next date of hearing i.e. 14th July, 2014. This order clarified that the interim direction should not be construed as reflection on the competence or merits of the second respondent in any manner whatsoever and was being passed in view of the legal flaw in selection.

31. The State Government thereafter had made an application for being impleaded in the writ petition before the Supreme Court and for placing additional documents on record. On 16th October, 2014, the Supreme Court disposed the application directing that if for any reason the second respondent makes a representation before the Central Government for disposal of the statutory appeal being before it against the order of suspension passed by the Government of Tamil Nadu, the Central Government would consider the representation in accordance with law as early as possible. Subsequently, vide order dated 15th October, 2015, the Supreme Court disposed of the writ petition as infructuous noticing that subsequent developments had taken place and the relief sought by the writ petitioner against appointment of the second respondent as Additional Director, CBI no longer survived. The reason was that the respondent had been appointed as Director General, in the National Crime Records Bureau (NCRB) on 16th June, 2015.

32. It was urged that the letter of willingness dated 15.10.2013 was for the year 2013 alone and not for the year 2014. We would not accept the said contention as it is a new plea and an afterthought. It is not what the State Government had pleaded or stated when the repeated request letters were written by the Central Government. In case the question of concurrence

would have arisen, it would have been decided as per Rule 6(1) of the Indian police Service (Cadre) Rules, 1954.

33. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. There would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

NOVEMBER, 30th 2016
NA /ssn

