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

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Decided on: 24.05.2018

+ W.P.(C) 9230/2016, CM APPL. 37322/2016 (Stay), CM APPL. 17694/2017, CM APPL. 37599/2017 (for directions), CM APPL. 1628/2018 (for directions)

UNION OF INDIA & ORS

..... Petitioners

Through: Mrs. Maninder Kaur Acharya, ASG
along with Mr. Rajesth Katyal, Adv.

versus

ASHOK KUMAR AGGARWAL & ANR

..... Respondents

Through: Mr Rakesh Kumar Khanna, Sr. Adv
with Mr S.K. Gupta and Mr Ashutosh
Dubey and Ms Shefali Jain and Ms
Drishti Rathore, Advs.

+ W.P.(C) 9231/2016, CM APPL. 37325/2016 (Stay), CM APPL. 17696/2017

UNION OF INDIA & ORS

..... Petitioners

Through: Mrs. Maninder Kaur Acharya, ASG
along with Mr. Rajesth Katyal, Adv.

versus

SHRI ASHOK KUMAR AGGARWAL

..... Respondent

Through: Mr Rakesh Kumar Khanna, Sr. Adv
with Mr S.K. Gupta and Mr Ashutosh
Dubey and Ms Shefali Jain and Ms
Drishti Rathore, Advs.

+ W.P.(C) 9274/2016, CM APPL. 37434/2016 (stay), CM APPL.
41404/2016 (seeking ad-interim ex-parte directions) and CM APPL.
17695/2017

UNION OF INDIA & ORS

..... Petitioners

Through: Mrs. Maninder Kaur Acharya, ASG
along with Mr. Rajesth Katyal, Adv.

versus

ASHOK KUMAR AGGARWAL

..... Respondent

Through: Mr Rakesh Kumar Khanna, Sr. Adv
with Mr S.K. Gupta and Mr Ashutosh
Dubey and Ms Shefali Jain and Ms
Drishti Rathore, Advs.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

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1. The petitioners have filed these three writ petitions, challenging the common order dated 02.02.2016 of the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') whereby the three original applications

bearing OA No. 3971/2015, OA No. 2976/2014 & OA No. 2977/2014 of the respondent were allowed.

2. The factual matrix of the case is that the respondent joined the services of Union of India as Income Tax Officer (ITO) Group 'A' in December, 1985 and eventually he was promoted and was working as a Joint Commissioner of Income Tax and during the period from 06.11.1996 to 31.12.1998, he was working as Deputy Director, Delhi Zone, Enforcement Directorate (ED), New Delhi..

3. That on 01.01.1998, ED conducted search of three shops and residential premises of one Sh. S.C. Barjatya and during the search, besides other articles, seized a fax message (debit advice), reflecting a debit of US dollar 1,50,000/- from the account of Royale foundation, Zurich, Switzerland in favour of one S.K. Kapoor holder of account no. 022-9-608080, Hong Kong & Shanghai Banking Corporation (HSBC) as per the advice of customer i.e. Royale foundation.

4. A complaint dated 04.01.1998 was filed by Sh. S.C. Barjatya with ED claiming that the alleged fax message was a forged document and was planted during the search, with the intention to falsely frame him in that case. On this complaint of Mr. S.C. Barjatya, CBI, took a *prima facie* view

of criminal conspiracy of forging a document and using it as a genuine document with the intention to create false evidences and registered a case RC No. S18/E0001/1999 dated 29.01.1999 against the respondent and one Mr. Abhishek Verma. The proceedings of that case show that the accused Sh. Abhishek Verma filed an application dated 18.07.2000 in the Court, seeking pardon and becoming approver.

5. The said application was opposed by the respondent and his application was rejected by the Special Judge vide order dated 03.05.2001. CBI, however, did not oppose the application dated 18.07.2000 of Sh. Abhishek Verma. In view of the no objection of CBI, the Special Judge allowed the application of the accused Sh. Abhishek Verma, vide order dated 07.09.2001. The respondent challenged the said order before this Court vide Crl. Misc. (Main) No. 3741/2001. While the said petition was pending before this Court, the charge sheet in the case was filed on 28.06.2002 and the Court took cognizance of the offences on 08.07.2002 and the charges were framed on 17.12.2005. This Court in Crl. Misc. (Main) No. 3741/2001, vide order dated 20.08.2007, quashed the order dated 07.09.2001 of the Special Judge and remitted the matter back to the Special Judge for fresh consideration. CBI challenged this order in Supreme Court

in Criminal Appeal No. 1837/2013. The Criminal Appeal was dismissed by the Supreme Court vide order dated 22.11.2013.

6. Another FIR No. S19/E0006/99 dated 07.12.1999 was registered against the respondents for amassing assets disproportionate to his known income, on the basis of a preliminary enquiry dated 17.09.1999. Sanction for prosecution was sought by CBI which was accorded on 26.11.2002. The charge sheet was filed on 05.12.2002 and the cognizance was taken by the Court and summons were issued to the respondent on 10.01.2003. The respondent challenged the validity of the sanction by filing applications dated 01.05.2003 and 12.09.2005 before the Special Judge, who dismissed them vide order dated 28.07.2007. This order was challenged in Revision Petition No. 589/2007 before this Court and by order dated 03.10.2007, the sanction order was quashed and the matter was remanded back to the Special Judge for fresh consideration. CBI challenged this order in CrI. Appeal No.1838/2013 in Supreme Court which was dismissed vide order dated 22.11.2013. On remand of the case for reappraisal of the matter whether the sanction to prosecute the respondent validly given or not, the Special Judge, after applying its mind, concluded that the sanction had been validly given. This order of the Special Judge and the sanction to prosecute

given by the competent authorities in RC No. S18/E0001/1999 were challenged by the respondent in W.P.(Crl). 1401/2002 and Crl. Rev. P. 338/2014 before this Court and vide common order dated 13.01.2016 titled as **Ashok Kumar Aggarwal vs. CBI & Ors.**, reported as **2016 (154) DRJ 489**, the orders of sanction of the competent authority in both the criminal cases were quashed.

7. In view of the registration of these two criminal cases against the respondent, he was suspended vide order dated 28.12.1999. The respondent challenged the suspension order in OA No.783/2000. The OA was allowed on 17.01.2003 and the opportunity was given to the petitioners to pass a fresh order. The period of suspension of the respondent was extended for further periods vide order dated 25.04.2003. This order was also challenged by the respondent in OA No. 1105/2003 which was dismissed vide order dated 09.05.2003. The suspension order was reviewed from time to time and was extended for further periods. The respondent vide OA No. 2842/2010 sought the quashing of the suspension order. While disposing of the said OA vide order dated 16.01.2011, the Tribunal directed the Competent Authority to convene the meeting of Special Review Committee (SRC) within the stipulated period to consider revocation or continuation of

the suspension of the respondent, after taking into consideration various factors as mentioned in the said order. Consequently, the meeting of SRC was convened and on its recommendation, vide order dated 12.01.2012, the suspension of the respondent was further extended. The SRC again met and vide order dated 03.02.2012, recommended the continuance of the suspension. These orders were challenged by the respondent in OA No. 495/2012 before CAT and vide order dated 01.06.2012, the suspension order was revoked. The suspension of the respondent was still extended for a period of six months pending challenge to the order of the Tribunal. Writ Petition No. 5247/2012 before this Court against the said order was dismissed vide order dated 17.09.2012. The petitioners challenged the order in Civil Appeal No. 9454/2013 in the Supreme Court. Their Appeal was dismissed by Supreme Court vide order dated 22.11.2013. The conduct of the petitioners; whereby it extended the suspension of the respondent, despite the revocation of the same by the Tribunal was taken seriously by the Supreme Court and it reprimanded this practice and passed strictures while dismissing the Civil Appeal of the petitioners.

8. After this order of the Supreme Court, the petitioners vide office order dated 06.01.2014 revoked the suspension of the respondent, however, issued

the transfer order dated 20.01.2014. This transfer order was challenged by the respondent in OA No.178/14. The Tribunal vide its order dated 22.07.2014 quashed the transfer order. The duties were assigned to the respondent only in December 2015.

9. Vide letter dated 29.01.2001, DIG, Police, CBI, ACP, New Delhi forwarded a report in PE-DA-1-1999-A-0003, based on the enquiries made by CBI against the respondent and recommended the disciplinary proceedings against him on five articles of charge which are reproduced as under:-

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

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

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

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

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

10. The approval of Hon'ble Finance Minister was solicited for initiation of disciplinary proceedings for major penalty and for appointment of the Enquiry Officer and the Presenting Officer, the approval was given on 16.08.2001. The memorandum of charge dated 13.09.2001 containing these five articles of charges, was issued to the respondent. The enquiry began and on 21.10.2002, the Enquiry Officer submitted his report and he found that petitioners could not prove all the charges. With the approval of Chairman CBDT, the case was referred to CVC for its second stage advice.

The CVC advised for imposition of suitable major penalty vide OM dated 08.12.2003. The said OM was sent to the respondent for his comments/representations. He submitted his comments dated 14.01.2004. The matter was thereafter placed before the Finance Minister for his approval. Reference to UPSC for its statutory advice was submitted on 10.12.2007 and it advised imposition of penalty of downgrading the Charged Officer (CO) to the lower stage in his time scale of pay for a period of three years with denial of increments of pay during the said period and on expiry, the reduction to have effect of postponing his future increments. The matter was again placed before the Finance Minister for acceptance of the advice of UPSC and for imposition of proposed penalty. The requisite approval was granted on 18.12.2008. Before the penalty order could be passed, the respondent filed OA No. 2680/2008 seeking quashing of memorandum of charge dated 13.09.2001 on the ground that the approval of Finance Minister i.e. the Disciplinary Authority was not obtained prior to initiation of the disciplinary proceedings.

11. Mr. B.C. Shah, an Enforcement Officer, had received some information regarding M/s Intech Technology (Far East) India Limited and initiated an enquiry. The search of premises of M/s Intech Technology (Far

East) India Limited was authorised by Shri R. Ravindranath Assistant Director. The said file was put up for approval before the respondent on 06.01.1998, which he approved. The raid was conducted by a team of Enforcement Directorate (ED) consisting of officers Shri. K.S. Thapar, CEO; Smt. Mohini Makhijani, EO; Sh. Balwinder Singh, EO; Sh. J.P. Kujur, EO; Sh. Ajay Singh, AEO and Shri. G.K. Dutta, EO. In the matter wherein the search of the premises of M/s Intech Technology was conducted by the officers of ED and in which one Pawanjit Singh of M/s Intech Techonology was brought to the office of ED after the search, CBI received a complaint on 15.01.2000 from Sh. Pawanjit Singh wherein he complained of harassment by respondent. On the basis of the said complaint, the CBI prepared a report dated 23.05.2002 and made a recommendation for initiation of disciplinary proceedings against the respondent. This report was analysed by the Vigilance Department who concluded that no case had been made out for departmental action and a proposal was sent to Chairman, CBDT for referring the matter to CVC for its first stage advice with a recommendation to close the case against the respondent. However, a charge sheet dated 01.12.2006 was issued to the respondent for the alleged misconduct of harassing Sh Pawanjit Singh by launching an enquiry against

him. The respondent in a OA No. 456/2006 has challenged the charge sheet dated 01.12.2006.

12. Both the said OA's no. 456/2006 and 2680/2008, were allowed by the Tribunal and vide common order dated 24.02.2010, the Tribunal has quashed the memorandum of charges dated 01.12.2006 and dated 13.09.2001 in line with the findings of its Coordinate Bench OA No. 800/2008 titled **B.V. Gopinath Vs. Union of India.**, decided on 05.02.2009. However, the Tribunal granted liberty to the petitioners to proceed with the matters *de novo*. The relevant directions are-

“7. We, therefore, allow these applications. The charge sheets issued will stand quashed. But we make it clear that as has been reserved in the cases cited earlier, there , will be full liberty to the respondents to proceed with the matter de novo, and the passage of time will not also preclude them from treating the issue as might be in their discretion, of course, subject to rules which have particular relevance.

We make no order as to costs.”

13. The findings of *Sh. B.V. Gopinath (supra)* were under challenge before the Supreme Court and the petitioners directly filed the SLP (C) No.1200/2012 in Supreme Court challenging the common order dated 24.02.2010. The Supreme Court dismissed the SLP vide order dated

05.09.2013 in the matter of *Sh. B.V. Gopinath (supra)*. The review petition of UOI in the case of *Sh. B.V. Gopinath (supra)* was also dismissed by the Supreme Court On 09.01.2014.

14. Pursuant to the liberty given to the petitioners, fresh memorandum of charge sheets dated 14.03.2014 (01.12.2006) and 20.03.2014 (13.09.2012) albeit on the same allegations were issued. The respondent challenged the fresh memorandum of charge sheets dated 14.03.2014 in OA No. 2977/2014 and 20.03.2014 in OA No. 2976/2014.

15. The respondent also filed an OA No. 1286/2014, seeking directions to the petitioners for grant of promotion to him, which was disposed off with the direction to the petitioners to consider a representation dated 31.07.2015 of the respondent, for ad hoc promotion. Vide order dated 05.10.2015, the petitioners rejected his representation for ad hoc promotion on the ground of issuance of two chargesheets and the gravity of charges against him. This order dated 05.10.2015 was challenged in OA No. 3751/2015. Vide impugned order dated 02.02.2016, the petitioners were directed to give all such promotions to the respondent as have been granted to his juniors, with all the consequential benefits and for that purpose, his ACRs written upto the year 1999 shall be considered.

16. The petitioners have challenged the impugned order on the grounds that the order is perverse, illegal, against the settled principles of law and that the Tribunal has exceeded its jurisdiction while quashing the memorandum of charges dated 14.03.2014 and 20.03.2014. It is argued that the Tribunal ought not to have entered into the gravity of the charges; and quashing the memorandum of charges on the ground that the charges were not grave, the Tribunal has exceeded its authority. It is also urged that the findings of the Tribunal that there was unexplained delay in issuance of memorandum of charges and thereby prejudice has been caused to the respondent, is factually incorrect. The findings that there was no application of mind, while approving initiation of disciplinary proceedings and memorandum of charges, is a finding which is incorrect and contrary to the record.

17. It is submitted that mere issuance of charge sheet is not an adverse order and does not give rise to any cause of action. It is further submitted and argued that the quashing of the charge sheet is warranted only in very rare and exceptional cases i.e. when the same is either without jurisdiction or wholly illegal and such is not the case herein.

18. In support of these contentions and arguments, Mrs. Maninder Kaur Acharya, learned ASG has placed reliance on the findings of the Hon'ble Supreme Court in the matter of UOI vs. Kunnisetty Satyanarayana, 2007 AIR (SC) 906 on paragraphs 13, 14 and 15. Reliance is also placed on the findings of this Court in the case of Govind Pratapati vs. UOI, 2008 (150) DLT 435 and it is submitted that while the Court or the Tribunal has no jurisdiction to re-appreciate the evidence or substitute the findings of facts recorded by disciplinary authority, the quashing of charge sheet on the ground that the charges could not have been proved, is illegal and beyond jurisdiction of the Tribunal. Since no occasion to prove the charges by leading evidence was given to the petitioners, as the respondent rushed to the Tribunal on issuance of memorandum of charges, the Tribunal had no basis to determine the correctness of the charges. The findings of the Tribunal that charges against the respondent are not grave, is also not sustainable in view of the fact that major penalty was proposed on these five articles of charge which itself shows that all the charges are grave. The Tribunal has stepped into the shoes of Investigating Officer/Appellate Authority by examining the provision of Section 40 of Foreign Exchange Regulation Act (FERA). It is further argued that failure to maintain

devotion towards duty is a grave misconduct and simply because charges do not relate to moral turpitude, *ipso facto* cannot be a ground to hold that charges are not grave. Reliance is placed on the findings of this Court in the case of **Union of India vs. Anil Puri, 2011 (1) ILR (Del) 63** wherein this Court has held as under:-

“30. Deciding W.P.(C) No. 2292/2010 Union of India v. Dr. V.T. Prabhakaran, on 26.7.2010 we had discussed whether lack of moral turpitude is an essential ingredient of a grave misconduct and had opined in the negative.....

19. It was argued that the Tribunal although conferred with the power of judicial review, has to confine itself to the decision making process of the authority and cannot judicially review the decision of that authority. In this behalf, the reliance has been placed on paragraph 15 of **State of UP vs. Manmohan Nath Singha, (2009) 8 SCC 310** and is argued that the Court does not sit in judgment on merit of the decision and do not act as Court of Appeal. Reliance is also placed on **UOI and Ors vs. P. Gunasekaran, 2015 AIR (SC) 545** and it is argued that it is not open to Courts to correct a finding of fact on the ground that evidence is not sufficient or inadequate and so the Tribunal could not have entered into the question whether the decisions to issue memorandum of charges was right or not.

20. It is further argued by learned ASG that undue reliance of the Tribunal on paragraph 90 of the judgment of this Court dated 13.01.2016 and concluding that the act of petitioners amounts to legal malafide, is unwarranted because the facts and circumstances which are the basis of issuance of the memorandum of charges dated 14.03.2014 and 20.03.2014 are different than the circumstances in the criminal cases on which this Court had passed the said order.

21. Equally defective and wrong is the finding of the learned Tribunal on delay. It is submitted that the Tribunal has failed to consider that there was no delay on the part of the petitioners in issuing the fresh memorandum of charges *de novo* in terms of liberty granted to the petitioners, after the first memorandum of charges dated 13.09.2001 and 01.12.2006 were quashed vide common order dated 24.02.2010 in earlier challenges. As soon as the matter attained finality on 05.09.2013 in the matter of *Sh. B.V. Gopinath* (supra), fresh memorandum of charges dated 20.03.2014 and 14.03.2014 were issued. It is further argued that the learned Tribunal has failed to consider the dictum of law that it is for the employee to make out a case of prejudice due to the delay in issuance of a memorandum of charges, which can only be done in the disciplinary proceedings before the Enquiry Officer.

The impugned order needs to be quashed on this ground as well. Reliance is placed on the findings of Hon'ble Supreme Court in the case of **Govt. of AP & others vs. Appala Swamy, 2007 (3) SCALE 1** (paragraphs 12, 13 and 17).

22. It is further argued that the respondent could not have challenged the fresh charge sheets since the fresh charge sheets dated 14.03.2014 and 20.03.2014 are issued in compliance of the order dated 24.02.2010. The learned Tribunal has therefore erred in allowing the challenge of the respondent to the fresh charge sheets.

23. It is further argued that reliance on the internal notings by the Tribunal while concluding that the charges could not have been proved, is untenable because the internal notings are opinions of the officer concerned and are not meant for outer exposure. Reliance in this regard is placed in the matter of **Vivek Batra vs..UOI, (2017) 1 SCC 69** and **Sethi Auto Service Station & Anr vs. DDA and Ors, (2009) 1 SCC 180.**

24. It is submitted that W.P.(C) No. 9274/2016 relates only to promotion. It is prayed that the impugned order be set aside and the petitioners be allowed to proceed with the departmental enquiries against the respondent on memorandum of charges dated 14.03.2014 and 20.03.2014.

25. The writ petitions are contested by the respondent. Mr. Rakesh Kumar Khanna, learned Senior Counsel appearing on behalf of the respondent argued that the issuance of the memorandum of charges is a motivated act on the part of the competent authority, who had acted with malice and with the sole aim to cause prejudice to the respondent; that while issuing the memorandum of charges at the first instance and subsequently under the liberty granted, there was no application of mind by the Disciplinary Authority and it were issued at the instance of the CBI who had some axe to grind against the respondent.

26. It is argued that there is enough material present on record to show that CBI has been acting with malice against the respondent. There are various orders of the Courts in which serious strictures have been passed on the conduct of CBI. The CBI registered two false cases RC No. S18/E0001/1999 and RC No. S19/E0006/1999 with malafide intentions as is obvious from the various Court cases initiated by the respondent for wrongful acts of CBI in courts. Strong strictures were passed against the CBI by the Courts in those matters. Reliance is placed on Cr. Misc (Main) petition No. 3741/2001 in the case Ashok Kumar Aggarwal vs. CBI reported as **2007 (98) DRJ 80** and CBI vs. Ashok Kumar Aggarwal and

Anr. (2013) 15 SCC 222. It is submitted that case was registered on the false statement of Mr. Abhishek Verma, making him an approver, though more than 15 cases which included those 10 cases registered on the basis of investigations done by respondent under FERA, and three cases under Official Secrets Act including infamous 'Naval War Room Leak' case were filed by CBI. Mr. Abhishek Verma, after disapproval of his approver status by the Supreme Court spilled the beans that he was forced, pressurized and coerced under the threat to his life by the officers of CBI including Ramnish, Deputy SP, Investigating Officer of that case, to make the statement implicating the respondent, in his application supported by his sworn affidavit which he filed in the Trial Court on 31.07.2016 in pending criminal case. The said application is placed at page 309-316 of the paper book of WP(C) 9230/16.

27. It is further argued that the prosecution of the respondent in both criminal cases was quashed by this Court vide order dated 13.01.2016 titled as Ashok Kumar Aggarwal vs. CBI & Ors., reported as 2016 (154) DRJ 489 and the Court also passed serious strictures on the conduct of CBI and also held that the prosecution was false and malafide and had caused suffering, humiliation and mental trauma to the respondent for 18 years. It was also

noted by this Court that the petitioners had acted in this manner intentionally, to ensure the freedom of certain FERA accused who were being investigated by the respondent as Deputy Director of the Enforcement Department.

28. It is argued that the CBI had adopted all illegal means to harass the respondent. It also registered false criminal cases against his family members. CBI arrested his brother, Mr. Vijay Kumar Aggarwal on 19.10.2000 in a case of disproportionate assets registered against the respondent on the basis of a cooked up story. Not only his brother, but the staff of his brother, namely, Sh. Sheesh Ram Saini, an accountant, was also harassed by CBI. They were repeatedly summoned in the CBI office where they were beaten, abused and threatened of implication in false criminal cases. His brother, Mr. Vijay Kumar Aggarwal was pressurized and beaten with the intention to impress upon the respondent to withdraw the complaint filed by him against officials of CBI under Section 340 of Code of Criminal Procedure (CrPC) in the Court of Special Judge, Tis Hazari. Mr. Vijay Kumar Aggarwal filed W.P.(CrI.) 675/2001 and Sh. Sheesh Ram Saini filed W.P. (CrI.) 738/2001 before this Court against the CBI. Both the writ petitions were allowed vide orders dated 26.06.2006 passed separately in

each case and the Special Cell of Police was also directed to register appropriate cases against the officials of CBI namely, Mr. Ramnish Singh and Mr. Vinod Pandey on the basis of their complaints and further directed that the investigation be conducted by an officer, not below the rank of Assistant Commissioner of Police. Both were summoned by the Trial Court. Their appeal against summoning order was also dismissed by this Court in the case of **Ramnish & Anr. vs. CBI & Ors, 2016 CrL LJ 2371**. The Court held that in the preliminary enquiry incorrect facts had been recorded and that the arrest of the respondent and the investigation conducted was done with malafide intentions. The appeal against the said judgment was dismissed by Supreme Court and Mr. Ramnish Singh and Mr. Vinod Pandey, respective IO's, are now facing trial for causing physical injuries while arresting him and causing damage to the house property of the respondent and also for other criminal acts. The charges have also been framed in those matters against them.

29. The Hon'ble Supreme Court vide order dated 22.11.2013 in the matter of **CBI vs. Ashok Kumar Aggarwal, (2014) 14 SCC 295**, quashed the sanction to prosecute the respondent in R.C No. S19/E0006/1999 and passed serious strictures against the conduct of CBI. In its order, the Hon'ble

Supreme Court also took note of the orders of this Court dated 26.06.2006 whereby this Court had ordered the registration of two FIRs against the two concerned officers of the CBI who had acted malafidely and with highhandedness.

30. It is argued that CBI had been acting all along with ill motives and with sole intention to harass him while recommending departmental enquiries vide its recommendations dated 29.01.2001 and 23.05.2002. It is argued that the Tribunal, while taking note of the conduct of CBI, has rightly held that there was an element of malice in recommending disciplinary enquiries.

31. It is further argued that not only CBI but the petitioners have also acted with malice. All the orders of the competent authorities are ingrained with malafide intentions. It is submitted that the fact that the suspension order of the respondent was mechanically reviewed every six months for about 13 years, on the recommendation of CBI, clearly shows that the disciplinary authority was also hand in glove with CBI. Despite the order of the Tribunal dated 01.06.2012, quashing suspension order, it was further extended by the competent authority; a clear reflection of the malafide on their part. The Supreme Court, in its order dated 22.11.2013 while

dismissing petitioner's Civil Appeal No. 9454/2013 found their act contemptuous and suffering with legal malice and passed serious strictures on this conduct of the petitioners. The Hon'ble Supreme Court has clearly observed in paragraph 34 of UOI and Ors. vs. Ashok Kr. Aggarwal, (2013) 16 SCC 147 that "*the aforesaid facts make it crystal clear that it is a clear cut case of legal malice....*"

32. Despite that the petitioners did not revoke his suspension order and the respondent had to file a Contempt Petition No. 116/2014 in Civil Appeal No. 9454/2013 before Hon'ble Supreme Court. The Hon'ble Supreme Court took serious note of this conduct of the petitioners and pursuant to directions dated 28.02.2014, the CBDT tendered its written apology.

33. It is further argued that the CBI had adopted all means to harass him, that is why after the revocation of suspension order, he was transferred vide transfer order dated 20.01.2014, which was issued in violation of the transfer policy. The Court in its order dated 22.07.2014 held that the transfer was nothing but an instrument to harass the respondent and cancelled the transfer order.

34. The petitioners in order to harass the respondent went upto the length of making false statements before this Court on 24.12.2014 and thereby

fraudulently obtained the *ex-parte* order in W.P. (Civil) No. 9305/2014 titled **UOI & Anr. Vs. Ashok Kumar Aggarwal** decided on 12.01.2015. On the application of the respondent under Section 340 of CrPC (perjury), the Court vacated the *ex-parte* stay vide order dated 09.01.2015 and in order to escape consequences, the petitioners withdrew the said writ petition with an undertaking to post the respondent in Delhi only. The petitioners however did not honour the said undertaking and did not give him any posting for about an year. It was only on the intervention of CAT, in the execution petition of the respondent, that he was given his posting. It is argued that this conduct of the petitioners clearly establishes malafide and malice on their part as well. In this regard, the findings of the Tribunal cannot be faulted.

35. It is further argued that the fresh memorandum of charges dated 14.03.2014 and 20.03.2014 are issued with the intention to defeat claim of respondent for *ad hoc* promotion. It is a counter blast to his representation to the Revenue Secretary, claiming *ad hoc* promotion, pursuant to the liberty given to him by the Hon'ble Supreme Court in Civil Appeal No. 9454/2013. Thus, the very issuance of fresh charge sheets are vitiated.

36. The approval of the competent authority of the memorandum of charges is, without independent application of the mind, since there was no

material before the competent authority to independently assess the charges, as clearly no material documents or the statements of the witnesses was sent by CBI to the competent authority while recommending the disciplinary proceedings. This clearly shows that the competent authority has acted solely on the recommendation of the CBI whose act has been deprecated by the Hon'ble Supreme Court and this Court in various judgments between the parties. Even the CBI while making recommendations had acted in gross violation of Rule 20.5 of CBI Manual. The fact that the officers of Enforcement Directorate and the Vigilance Wing upto the level of Chairman found no merit in CBI's recommendations goes to show that the competent authority did not consider the notes put up before it and did not apply its independent mind but had acted at the behest of CBI. It had acted on the revised note, put up before it, without even obtaining the first stage mandatory CVC's advice. This shows that it has acted mechanically, without any application of mind. This vitiates the memorandum of charge. Reliance is placed on the findings of Hon'ble Supreme Court in the case of **CMD, Coal India Ltd. vs. Anantha Saha & Ors**, reported as (2011) 5 SCC 142 . It is argued that as per the DoPT's Guidelines and CVC's Rules, the first stage advice of CVC, is mandatory.

37. The action of the petitioners in seeking approval of the disciplinary authority for initiation of disciplinary enquiry and simultaneously seeking approval for appointment of Enquiry Officer and Presenting Officer, which is required to be obtained only after examining the comments/reply of the charged officer, is an act in violation of Rule 14 (5) (a) & (b) of CCS (CCA) Rules, 1965. The earlier decision of CBDT that there was no case against the respondent was not put up before CVC while obtaining its advice and hence the advice given is based on incomplete material. In the enquiry proceedings on the five articles of charge, the Inquiry Officer did not find any ulterior motive or malafide on the part of the respondent in relation to any of the five charges. This further shows that there was no merit in either of the charges and the recommendation was the result of a conspiracy hatched against the respondent, with the intention to transfer him out of the Enforcement Directorate, since his action of taking action against high profile individuals annoyed many in the hierarchy.

38. The Tribunal's conclusion that the authorities took six years in making up their mind, to proceed against the respondent, and this conduct clearly shows that charges were not grave, cannot be faulted, since it is based on undisputed facts.

39. It is submitted that Mr. Pawanjit Singh was a notorious Hawala dealer whose office premises at Greater Kailash was searched by officers of Enforcement Directorate on 06.01.1998 and a number of highly incriminating documents, foreign currency of about Rs. 6 lakhs and details of his foreign bank account in HSBC Bank, Channel Island were sized by ED during the search. Mr. Neeraj Kumar, the then Joint Director of CBI, was nurturing a personal grudge against him for the reason that the respondent had refused to help his close friend namely Mr. Pawanjit Singh in the said FERA case. In order to settle scores with the respondent, Mr. Neeraj Kumar took false complaint from Mr. Pawanjit Singh after two years of the alleged incident. He also was instrumental in registration of the false case RC No. S18/E0001/1999, against the respondent. The respondent was stripped, harassed, humiliated and physically tortured by Mr. Neeraj Kumar in that case, that too in the presence of Mr. Pawanjit Singh. The basis of proposal of CBI for departmental enquiry was this false complaint. The Tribunal in its order in OA No. 2944/2014, found the conduct of Mr. Neeraj Kumar malafide, motivated and full of malice. In the said OA, Mr. Neeraj Kumar was also a party.

40. In this matter, the CBDT upto the level of Chairman, examined the matter and found no merit and recommended closure. The comments of the authority were sought on this report which were submitted on 10.11.2004 after two years. The first stage advice given by CVC on 07.07.2005, was given without examining the record since the relied upon materials were not put up before CVC. It is apparent from the fact that DIT (Vigilance) had sent a request to CBI on 24.10.2005 for furnishing the copies of relied upon documents, meaning thereby that relied upon documents were not put up before CVC, when it's first stage advice was sought. The fact that, while seeking approval of disciplinary authority for initiation of departmental enquiry, approval for appointment of Investigation Officer and Presenting Officer was sought simultaneously is in gross violation of the rules. Even the competent authority while considering approval noticed the delay and sought explanation of Chairman, CBDT for such a long inordinate delay. The memorandum of Charge was delayed for nine years of the alleged incident dated 06.01.1998 when the office of M/s Intec Technology (Far East) India Ltd was raided. Therefore, the findings of delay by the Hon'ble Judges of the CAT cannot be faulted.

41. The fresh charge sheets dated 14.03.2014 (earlier dated 01.12.2006) and dated 20.03.2014 (earlier dated 13.09.2001) are also vitiated for the same reasons which were valid for the earlier Memorandum of Charges, which were quashed. For issuance of fresh Memorandum of Charges, only a short note was put up for approval of the charge sheets and it is verbatim to the earlier Memorandums.

42. The mandatory first stage advice of CVC was not taken afresh. The reliance of the petitioners on **Chairman Central Board of Trustees vs. M. Vijayaraj** reported as **2011 (185) DLT 688** and the argument that failure to obtain CVC's advice is a mere irregularity and not illegality; and that *ex-post facto* advice would cure the irregularity, is not applicable to the facts of this case. In the recent judgment in *Vivek Batra's(supra)* case, it is held that the opinion of CVC is not an empty formality, but a step towards the formation of opinion by the Disciplinary Authority. Where the disciplinary authority differs with the opinion of CVC, it is required to refer the matter to DoPT. It is argued that in the facts of this case, where approval was sought only by putting before CVC, the memorandum of charges without the material in support of the charges, the failure to obtain prior approval of CVC is not a mere irregularity.

43. It is further argued that not only the earlier charge sheets were delayed but also that there was gross unexplained delay in issuing the fresh charge sheets on 14.03.2014 and 20.03.2014, issued only after four years, in terms of the liberty given to the petitioners by the Tribunal in its order dated 24.02.2010 and so the learned Tribunal has rightly concluded that there was a delay at every stage on behalf of the petitioners.

44. It is further argued that the petitioners had duly complied with the impugned order and withdrew the memorandum of charges dated 14.03.2014 and 20.03.2014, subject to the outcome of any appeal and conveyed the decision to him on 27.04.2016. Therefore, the present writ petitions which were filed on 03.10.2016, only after receiving the notice dated 20.08.2016, returnable on 03.10.2016, issued in the Contempt Petition of the respondent, shows that the same have been filed to avoid the consequences of the contempt petition. It is submitted that the petitions have no merit and are liable to be dismissed.

45. We have heard the arguments and have perused the written synopsis furnished by both the parties. We propose to dispose of all the petitions by this common order, firstly because it has arisen out of a common order, and

secondly, because common questions of law and facts are involved in all the cases and all three are connected by a common thread.

46. Vide the impugned order, memorandum of charges dated 14.03.2014 and 20.03.2014 were quashed and directions were issued to give all such promotions to the respondent as had been given to his juniors.

47. The first argument of learned ASG is that the learned Tribunal had exceeded its jurisdiction while quashing the memorandum of charges since mere issuance of the charge sheet or show cause notice does not give rise to any cause of action. In this behalf reliance is placed on the findings of the Hon'ble Supreme Court in the cases of Union of India vs. Kunisetty Satyanarayana, 2007 AIR (SC) 906 and State of Orissa vs. Sangram Keshari Misr, 2010 (13) SCC 311. On the other hand, the argument of the respondent is that the power of the Courts to quash the charge sheet at the initial stage in appropriate cases has not been taken away absolutely and the Court can quash the charge sheets even at the initial stage, before disciplinary proceedings start. Reliance is placed on the decisions of this Court in Than Singh vs. UOI, 2003 (3) SLJ 440 Delhi and State of Punjab vs. V.K. Khanna, (2001) 2 SCC 330.

48. We have given our thoughtful consideration to the case laws relied upon by the parties. In *Kunisetty Satyanarayana* (supra) case, the Apex Court while discussing the jurisdiction of the Court, in entertaining a petition challenging the validity of the charge sheet or show cause notice at the initial stage, held that "*ordinarily it does not lie*". The Court observed in paragraph 13 as under:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc."

(emphasis supplied)

49. The Supreme Court in *Kunisetty Satyanarayana* (supra) case has also held that the issuance of charge sheet or show cause notice does not ordinarily give rise to any cause of action because it does not amount to an adverse order, affecting the rights of any party, unless it has been issued by a person having no jurisdiction to do so. It is further observed that a writ lies only when some right of any party is infringed. In the case of *Sangram Keshari* (supra), it has been held that normally a charge sheet is not to be quashed prior to the conduct of an enquiry on the ground that the facts stated

in the charge sheet are erroneous as that is within the domain and function of the disciplinary authority and not of the Court.

50. There can be dispute to the settled proposition of law that the Courts should not ordinarily entertain a challenge to the charge sheet before the conclusion of the disciplinary proceedings and not even on the question of truthfulness of the charges. The Supreme Court in *Kunisetty Satyanarayana* (supra) case has however held that in rare and exceptional cases, the charges can be quashed at the initial stage. The Court held as under:-

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

(emphasis supplied)

51. In a subsequent case, the Hon’ble Supreme Court has further reiterated the principles governing the powers of the Courts to entertain a challenge relating to the validity of a charge sheet before the culmination of disciplinary proceedings. In a judgment titled as **Secretary, Ministry of Defence vs. Prabhash Chandra Mirdha** reported as AIR 2012 SC 2250, the Apex Court summarized the law on quashing of charge sheets as under:-

“13. Thus, the law on the issue can be summarised to the effect that chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the chargesheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings”.

(emphasis supplied)

52. This Court in *Than Singh* (supra) has listed the grounds on which the validity of a charge sheet can be questioned:-

12. It is now a well-settled principle of law that validity of a charge-sheet can be questioned on a limited ground. It is also well-settled that normally the court or the Tribunal does not interfere at the stage of show-cause. However, once the disciplinary proceedings are over, there does not exist any bar in the way of delinquent officer to raise all contentions including ones relating to invalidity of the charge-sheet. The grounds upon which the correctness or otherwise of the charge-sheet can be questioned are:

(i) If it is not in conformity with law.

(ii) If it discloses bias or pre-judgment of the guilt of the charged employee.

(iii) There is non-application of mind in issuing the charge-sheet.

(iv) If it does not disclose any misconduct.

(v) If it is vague.

(vi) If it is based on stale allegations.

(vii) If it is issued mala fide.

(emphasis supplied)

It therefore cannot be said that the Tribunal had exceeded its jurisdiction, while entertaining the OA's challenging the validity of the subject charge sheets at the initial stage.

53. The Tribunal has recorded the common grounds of challenge of memorandum of charges dated 20.03.2014 and 14.03.2014 in both the OAs as under:-

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

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

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

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

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

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

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

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

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

the relied upon documents in support of the charges so framed with it.

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

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

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

(i). The initiation of disciplinary proceedings against the applicant is fall out of malafide act on the part of respondent no. 4 in the OA, a close friend of FERA accused Mr. Pawanjit Singh. According to applicant, Mr. Pawanjit Singh was investigated against by the Enforcement Directorate under his supervision for his hawala activity including maintenance of illegal foreign bank account in Hongkong & Shanghai Banking Corporation, Channel Islands, Jersey, a well known international tax haven and since he could not help him despite being requested by respondent no.4, he out of personal grudge implicated him in false CBIs cases (ibid). In CBI

custody, he was made naked, abused, humiliated, insulted and physically tortured by respondent No. 4 and in the presence of Pawanjit Singh. Respondent No.4 also told, him that he had got his reputation spoiled through media and it could be better if he commits suicide once granted bail.

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

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

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

(v). The officers of the Directorate of Vigilance, CBDT found that the CBI report failed to establish any case of harassment or irregularity against the applicant and no malafide could be attributed to him. The ground K mentioned in the said OA reads thus:-

"Because after examining and considering CBI's report, the officers of Directorate of Vigilance, CBDT found that the said CBI's report failed to establish any case of harassment or irregularities against the applicant and no malafide can be attributed to the applicant. It was further found that there was no evidence in the CBI's report to show that the applicant was involved in the

alleged harassment of the said FERA accused Pawanjit Singh and therefore, in view of the above findings, Directorate of Vigilance, CBDT recommended that the case against the applicant may be closed. However, subsequently, the ED furnished its comments recommending the initiation of departmental enquiry under influence of Neeraj Kumar.

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

*(i). The CVC was not consulted at all either before issuance of the charge sheet already quashed by this Tribunal or the impugned charge sheet, thus the impugned charge sheet is vitiated on this ground alone. Even when the opinion of CVC was obtained after issuance of charge sheet already quashed by this Tribunal, the same was not made available to applicant and, therefore, the applicant is entitled to succeed in the OA also on the ground that even the advice of CVC obtained after issuance of charge sheet was not made available to him. The plea of the applicant that non supply of advice of CVC would vitiate the order of disciplinary authority is supported by the law declared by Hon'ble Supreme Court in the case of **D.C. Agarwal and Anr. Vs. State Bank of India and Ors** (AIR 1993 SC1197).*

(ii). The departmental proceeding was initiated against the applicant with a pre determined notion. Initially in the month of May, 2001, after considering and examining the CBI report, the officers upto the level of Chairman, CBDT approved the proposal for dropping the departmental action and it was only after the Revenue Secretary called a meeting of the officers of the CBDT on 7.08.2001 and directed them

to put up a proposal recommending initiation of departmental action and appointment of inquiry officer and presenting officer that the DG (Vigilance) had put up the proposal on 09.08.2001 for initiation of the proceedings as well as appointment of IO and PO and the proposal was approved by the Hon'ble Finance Minister in the capacity of disciplinary authority without application of mind on 16.08.2001. In the process, mandatory provision of obtaining 1st stage advice was completely ignored.

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

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

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

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

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

(iii) While quashing the charge sheet dated 1.12.2006 and 13.09.2001 in OA nos 456/2009 and 2680/2008, this Tribunal had given liberty to proceed with the matter

denovo, as it viewed that the passage of time will also not preclude them from treating the issue as might be in their discretion, of course, subject to rules which have particular relevance.

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

(v) In any case the charge sheet challenge in OA no. 2977/2014 is at the initial stage and in respect of the charge sheet under challenge in OA no. 2976/2014, the respondents have not acted upon the approval to start the enquiry from the stage the earlier chargesheet dated 13.09.2001 was quashed by this Tribunal. Mere taking of the approval to start the disciplinary enquiry from a particular stage of the earlier enquiry has not vitiated the disciplinary proceedings, as the applicant is not prejudiced thereby.

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

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

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

soliciting its approval for initiating the major penalty proceedings.”

54. We do not agree with the argument of learned ASG that the respondent could not have challenged the issuance of fresh charge sheets only because the same were issued pursuant to the liberty given to the petitioners by the Tribunal in earlier proceedings. The same plea was raised by the petitioners before the Tribunal. The Tribunal, while dealing with this plea, held as under:-

“ 51.In the previous proceeding the Tribunal had adjudicated only one ground i.e. whether a charge sheet served on the delinquent not approved by the competent authority can be sustained or not. Once the fresh charge sheets have been issued to applicant, he can always question the same on the grounds available to him to do so.”

Since vide order dated 24.02.2010, the earlier memorandum of charges were quashed only on the limited ground by the Tribunal, there is no estoppel to challenge the fresh memorandum of charges on grounds available to the respondent in accordance with law.

55. The argument of learned ASG is that, it is beyond the jurisdiction of the Tribunal to analyse; whether there was sufficient material to prove allegations of misconduct; or whether misconduct could have been proved

or not; or whether the reliance on the internal notings by the Tribunal is bad in law, since the notings are meant for internal use only, and are nothing more than opinions expressed by the officers at different levels, to help the concerned authority in taking a decision.

56. These arguments of the learned ASG are also without merit in the facts and circumstances of the instant case. The Tribunal has relied on the notings of the officials, only to reach to a conclusion that there was no application of mind on the part of competent authority, while approving the memorandum of charges since the essential material was not placed before it. The facts noted by the Tribunal in relation to charge sheet of 14.03.2014 in the impugned order are reproduced as under:-

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

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

Similarly, in the note placed on record as annexure A-5 to OA 2976/2014 (page 83), it is recorded that the

allegation against the applicant could not be proved with the help of documents listed by CBI in their draft charge sheet and the CBI probably wanted to prove the same by oral evidence of private persons included in the list of witnesses. At the cost of repetition, the relevant excerpts of the note is reproduced hereinbelow:-

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

Thus, the stand taken by the respondents in their reply is in conflict with the factual matrix recorded in the noting. It is indubitable that at the time of issuance of charge sheet, the disciplinary authority is not required to record the reason, far less the detailed reason.

(emphasis supplied)

57. While reaching to conclusion, the Tribunal held as under:-

"46.....However, in the case like the present one, where the recommendation for initiation of proceeding was by an external agency and the authorities in the helm of affairs emphasized that no case had been made out for initiation of proceeding against the applicant, least the disciplinary authority was required to say that despite such detailed notes it had certain documents or material warranting initiation of proceeding against the applicant and reference to such documents/proceedings should have been made. In the absence of comment upon the discussion and analysis brought to fore before the disciplinary authority and a decision taken to initiate the proceedings, it can be fairly viewed that there is non application of mind to the facts of the case by the disciplinary authority and for

that the purpose of para 5/481 of the CBI (Crime) Manual, 1991 is defeated. The said para read thus:-

" Documents to be sent to departmental authorities for taking departmental action.

5/481 The following documents should be sent to the departmental authorities for taking Regular Departmental Action for major penalty in CBI cases:-

(a). Supdt. Of Police's Report

(b). Draft of Articles of Charges (Draught Charges)

(c). Statement of imputations of misconduct or misbehaviour in support of the Articles of Charges (Statement of allegations)

(d). List of Witnesses

(e). List of documents

(f). Copies of Statements relied upon

(g). Copies of documents relied upon."

(emphasis supplied)

In paragraph 46, the Tribunal has also noted the facts as under:-

"46. As can be seen from the, aforementioned when in OA 2977/2014, the respondents have taken a stand that the documents were placed before the disciplinary authority, in OA2976/2014 they have stated that the disciplinary authority granted approval for initiation of the proceedings after studying the entire material and documents on record and independent application of mind. As can be seen from the contents of note of Addl. DIT (Vig) HQ dated 13.10.2002 placed on record as annexure A-10 to OA2977/2014 the orders/direction attributed to the applicant herein in compliance to which Shri Pavanjit Singh was allegedly harassed were verbal for most of the part,....."

58. There can be no doubt that internal notings of the officers at various levels are opinions on the subject, which ultimately led to the final decision, and notings in isolation have no value attached to them and it is the final decision of the authority which matters. But, the notings at different levels reflect the decision making process. The Tribunal has rightly relied on these internal notings to ascertain the factual position as to whether the decision making authority had sufficient material before him while taking the decision to approve the memorandum of charges and recommending disciplinary enquiry. Relying on these notings, the Tribunal has arrived at the conclusion that the delay in issuing the first memorandum of charges was also due to the reason that the authorities were unsure of gravity of the allegations as well the fact that they were of the opinion that there was no sufficient material in support of allegations and the merit of the charges. As regards the gravity of allegations of charges, the Tribunal has noted as under:-

“25. In the case of applicant, in OA no. 2976/2014, the alleged misconduct was committed by him between November 1996 to December, 1998 and the initial charge sheet (not found fully proved by the disciplinary authority) was issued to him on 13.09.2001 i.e. after almost three years of December, 1998 and five years of November, 1996. The Enquiry into the charges was concluded on 21.10.2002

and it was not proved that the applicant was instrumental in leakage of proposal regarding surveillance of telephone of Mr.Chandraswamy by ordinary dak to Special Director or he did not consult the Director in getting the application of Mr.Chandraswamy filed before the trial Court for medical treatment. The charge of approving the issuance of summons u/s 40 of FERA, 1973 with the ulterior motive of extorting illegal gratification was also not found proved against him. It was also not proved that he violated the direction of Director regarding publicity to the interrogation of Dr. J.K.Jain a senior Member of political party. The finding of the Inquiry Officer on each charges read thus:-

"ARTICLE -I

..... However, it is not proved that the CO was instrumental in leakage of the proposal.

ARTICLE-II

..... However, it is not proved that the investigations were pending in the Court or that he did not consult or inform the Director in the matter.

ARTICLE-III

..... However, it is not proved that the approval was granted with the ulterior motive of extorting illegal gratification from him.

ARTICLE-IV

This article is of charges not proved.

ARTICLE-V

..... However, it is not proved that the violated any direction of the Director in this behalf or that he gave publicity to the interrogation of Dr. J.K Jain."

26. The penalty proposed to be imposed upon him in the matter was of downgrading him to the lower stage in his time scale of pay for a period of three years with further direction that he would not earn increment of pay during the period and on expiry of the period and the reduction would have the effect of postponing his future increment. From the findings of the Enquiry report in respect of the charges levelled against the applicant and the penalty imposed upon him it is clear that the charges were not so grave that the delay of three to five years in initiation of the proceedings cannot be no ground to interfere with the same. Even after the preparation of the report by the inquiry officer on 21.10.2002, the proceedings was not finalized till 11.12.2008 when the applicant filed OA 2680/2008 before this Tribunal, finally disposed of by this Tribunal in terms of order dated 24.02.2010 quashing the charge sheet. Again after 24.02.2010, the respondents took four years in issuing the impugned memorandum dated 20.03.2014.

(emphasis supplied)

59. As regard gravity of charge in OA No. 2977/2015, the Tribunal has held as under:-

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

"40. Power to summon persons to give evidence and produce documents.—

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

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

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

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

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

60. As regards the argument of delay; in OA No. 2976/2015 *qua* the charge sheet dated 20.03.2014, the incident is alleged to have occurred

during the year 1998-1999 and the first charge sheet was issued on 3.09.2001, after a delay of 3 years. The Tribunal noting down the facts which not only demonstrated delay but also went on to show that the authorities themselves were not convinced whether enquiry could be started on the facts, and it was wavering of mind of the authorities, which caused delay, held as under:-

".....that the delay of three to five years in initiation of the proceedings cannot be no ground to interfere with the same."

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

"3. FR.II is a letter dated 16.05.2001 received from Under Secretary, Ad. IC, Deptt of Revenue

enclosing therewith a copy of Enforcement Directorate's letter F.No.C-3/5/01 dated 05.2001. Vide this letter the Enforcement Directorate has conveyed their comments on the investigation report of the CBI received in the case of Shri Ashok Kumar Aggarwal. This is in response to Directorate's letter dated 6.2.2001 (page 672/C) vide which the Department of Revenue was requested to provide comments of the Department on the, CBIs Investigation Report to the CVC for obtaining their advice and forwarding the vetted chargesheet, in case initiation of proceedings was considered necessary. The comments provided by the Enforcement Directorate are very sketchy and probably will not help the Disciplinary Authority i.e. FM in coming to a conclusion that whether or not initiation of disciplinary proceedings for major penalty is called for.

(emphasis supplied)

61. The Tribunal has further noted that enquiry of ED itself was of the opinion that there was not sufficient evidence on record to constitute a charge. The Tribunal noted as under:-

" 27. xxxx xxxx xxx

"5. With regards to the allegations contained in Article-I the Directorate of Enforcement in their comments have stated that they agree with the findings given by CBI with reference to the leakage of proposal to keep a surveillance over the telephones of Shri Chandraswamy. No comments have been offered as to whether the leakage of information was deliberate and with

any improper motive. The CBI in their report has also not mentioned any evidence which may prove malafide intentions on the part of Shri Ashok Kumar Aggarwal. Although in the article of charge as well as in the imputation in support of Article-I of the charge the CBI has mentioned that Shri Ashok Kumar Aggarwal failed to maintain absolute integrity. There seems to be no evidence to prove this component of the charge. In view of the above, it can be said that this is a charge where no vigilance angle is involved.

6. With regards to Article-II of the charge the Enforcement Directorate has commented that they have no objection to the initiation of RDA against Shri Ashok Kumar Aggarwal in the matter relating to non-opposing of Shri Chandraswamy's applications for going abroad. In respect of this Article of charge also there is no evidence with the CBI to prove malafide intentions on the part of Shri Ashok Kumar Aggarwal. Both the action referred to in Article-I and Article-II were taken by Shri Aggarwal in discharge of his official duties and there could be charge of lack of devotion to duty, but unless there is evidence to prove that these actions were done with an improper motive, the case may not be fit for charging that he failed to maintain absolute integrity. Thus, so far as these two articles of charges are concerned this may not be a case of initiating major penalty proceedings.

7. Regarding Article -III, IV & V, the Enforcement Directorate has commented that the allegations and CBI's finding there on are not borne out of their Directorate's case records. However, on going through the list of documents enclosed by the CBI along with the draft, charge sheet (pages

657-658/C) on the basis of which the charges are to be proved. There is mention of photocopies of certain folders pertaining to Shri Amit Burman of M/s Dabur India Ltd., M/s Jain Studio and Shri Basudev Garg. From the numbering of these files, it appears that these files are pertaining to the Enforcement Directorate. In view of the Enforcement Directorate's comments, the allegations cannot be proved with the help of documents listed by the CBI in their draft chargesheet. The CBI probably wants to prove these charges by the oral evidence of the private persons included in the list of witnesses.

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

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

"7.- The CBI seems to have based their case on the oral evidences given by certain private

persons, whose names have been listed in the list of witnesses against Shri Ashck Aggarwal in the draft chargesheet forwarded by the CBI."

29. From the aforementioned it is clear that the authority in the helm of affairs in the department was not convinced that a case for initiation of disciplinary proceedings against the applicant had been made out. There is no explanation of delay by the respondents for the period 1996/1998 to 13.09.2001 and 24.02.2010 to 20.03.2014. In view of the charges as proved against the applicant in terms of the inquiry report dated 21.10.2002 and no explanation of delay in initiation of the disciplinary proceedings till 13.09.2001 (quashed by 1 the Tribunal) and fresh initiation of charge sheet 20.03.2014 under challenge before us and the fact that the applicant is in woods of litigation for last 16 years i.e. major part of his service career, we are satisfied that the plea of delay raised on behalf of the applicant to quash the charge sheet deserve to be accepted.

30. xxxx xxx xxx

31. Even the fresh charge sheet impugned herein the present OA before us was also issued on 14.03.2014 i.e. after four years of the order passed by this Tribunal quashing the charge sheet dated 01.12.2006. There is no explanation for the said delay also? One of the plea, could be put forth by the respondents in respect of the period between 24.02.2010 and the date of fresh charge sheet i.e. March, 2014 in both the cases may be that the order of the Tribunal was challenged before Hon'ble Supreme Court. Such plea could be explanation for delay only if the respondents could have awaited the judgment of Hon'ble Supreme Court before issuance of the charge sheet. Once without awaiting the decision of the Hon'ble Supreme Court they have issued the charge sheet, then there should be justification of the delay. When there is no such justification, the belief that the authorities in the helm of affairs in respondents

Presenting

II

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

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

CONCLUSION

4. It is, thus, seen that the CBI report fails to establish any case of harassment or irregularity against Sh. Ashok , Kumar Aggarwal. There might have been some error of judgment on his part as a Supervisory Authority but no mala fide can be imputed from the facts. There is no evidence to show that he was involved in the harassment of Sh. Pavanjit Singh, other than the statements of officials who were directly involved in the so called harassment and who were prima facie to blame for the same. Further, no motive for such harassment has been identified by the CBI, which has itself conceded that the allegations of

monetary demand from the complainant etc., are not substantiated. As such, on the basis of the CBI report, no case can be made out for departmental action against Sh. Ashok Kumar Aggarwal and the CBI recommendation in this regard is not found acceptable.

PROPOSAL

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

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

62. These findings as is apparent are based on the factual matrix. The facts noted by learned Tribunal establish the long delay in the issuance of charge sheets as well as non-application of mind. While issuing the charge sheets, the authorities were convinced that the charges were not grave and were not supported by sufficient material on record. Learned ASG has not alleged that the Tribunal had not noted the correct facts. We find no reason to interfere with the findings of the Tribunal on this count.

63. It is argued by learned ASG that the respondent could not have raised the plea of malafide and malice without impleading the persons against

whom he alleges malice and malafide, as a party to the proceedings. Failing to do so, he cannot raise the plea of malice and malafide. It is further contented that even otherwise, the allegations of malice and malafide are against the CBI, who are not party to the proceedings and the initiation of disciplinary enquiry has been proposed by the petitioners, therefore, memorandum of charges could not have been quashed on this ground.

64. It is an admitted case that the memorandum of charges had been issued by the competent authority only on the recommendation of CBI. If the competent authority, while issuing the memorandum of charges had acted independently, i.e. had applied its mind on the facts presented before it and then concluded that there existed material on record for initiation of the disciplinary proceedings and approval of memorandum of charges, it cannot be said that the petitioners had acted with malice unless it is so proved by the respondent during the disciplinary proceedings by raising such contentions. However, if the competent authority has not applied its mind independently on the material before it and has not acted independently while approving the initiation of disciplinary proceedings and approving the memorandum of charges, then if the respondent had been able to show that all along the CBI had been acting malafidely, the petitioners step into the

shoes of the CBI and in such cases, it cannot be said that the disciplinary proceedings have been initiated or memorandum of charges have been approved by the competent authority independently on application of its own mind and not at behest of CBI.

65. The contention of malafide and malice on the part of CBI and the petitioners, had been raised by the respondent before the Tribunal and he relied upon certain facts, many of which are part of judicial orders; and the Tribunal on the basis of those facts, reached to the conclusion that the CBI and its officials had been acting malafidely and with malice against the respondent.

66. The case No. S18/E0001/1999 was registered, on the complaint dated 04.01.1998 of Shri S.C. Barjatya, who was found involved in Hawala racket and whose premises were searched on 01.01.1998 by ED against the respondent and one notorious Hawala dealer and Arms Dealer namely, Mr. Abhishek Verma, whose application for pardon and becoming an approver was not opposed by the CBI. This conduct of CBI and its failure to place before the concerned Court the relevant papers was deprecated by this Court in a challenge by the respondent in **Ashok Kumar Aggarwal vs. CBI, 2007**

(98) **DRJ 80**, in which he was also an accused. The Court has noted down in paragraph 19, the deprecable conduct of CBI as under:-

"19. When the matter is examined from this perspective, I am of the opinion that the petitioner has been able to make out a case for interference. The respondent No. 2 moved application with the Special Judge for being an approver and grant of pardon to him on 18.7.2000. The CBI gave no objection for grant of pardon to him before the Special Court on 1.9.2000. The Special Judge asked for certain information about the respondent No. 2 before deciding this application. The information asked for by the Special Judge in his order dated 1.9.2000 was crucial and would reflect the mind of the Special Judge, as he wanted to know about the antecedents of the respondent No. 2 before bestowing his consideration on the request made by him for pardon. In this order, the learned Special Judge accordingly also directed CBI to submit a list of criminal cases being investigated by different agencies involving Abhishek Verma including the outcome of the FERA investigation for hawala payments of USD 1,50,000 to the Court which was the foundation of forgery in the present case as per the CBI and the matter was adjourned for 21.9.2000.

20 xxxx xxxx xxxx

21. xxxx xxxx xxxx

22. I am, therefore, of the opinion that entire material was not placed before the learned Special Judge (which was specifically ordered by his predecessor) when the application for pardon was considered....."

(emphasis supplied)

The matter was remanded for fresh consideration with a direction to CBI to place the entire material before the concerned Court for its consideration.

67. The CBI instead of producing the entire material before the Court, challenged this order in the Supreme Court by way of Crl. Appeal No. 1837/2003 dated 22.11.2013 titled as **CBI vs. Ashok Kumar Aggarwal & Anr., (2013) 15 SCC 222.** The appeal was dismissed by the Hon'ble Supreme Court and the Hon'ble Court had frowned upon the conduct of the CBI, that it had been agitating the issue instead of disclosing the material, asked for, before the concerned Court.

It is also noteworthy that in the said case, when the approver status was taken away from Mr. Abhishek Verma pursuant to orders of the Courts, he filed an application, supported by his affidavit in the trial Court on 31.07.2016, complaining of harassment, coercion and pressure and threat to life, extended to him by the CBI officers thereby forcing him to make false and concocted statement against Shri. Ashok Kumar Aggarwal. This further speaks eloquently of the conduct of the CBI.

68. The CBI also registered a case no. S19/E0006/1999 dated 07.12.1999 relating to amassing disproportionate assets to its known income against the

respondent. In the said case, the CBI raided the company premises of Sh. Vijay Kumar Aggarwal, brother of the respondent, and seized the records and other materials from his premises and also summoned his accountant, Sh. Sheesh Ram Saini, several times in CBI office and subsequently arrested both of them. This Court in its order dated 26.06.2006 in writ petition (Crl.) no. 738/2001 filed by Sh. Sheesh Ram Saini, noted the highhandedness of CBI and directed the registration of the FIR against the officers of CBI.

69. Similarly, in a writ petition bearing W.P (Crl) 675/2001 filed by Sh. Vijay Aggarwal, seeking writ/direction in the nature of *mandamus* for registration of FIR against the officers of the CBI for the offences under Section 506/341/342/166 of Indian Penal Code (IPC) and to launch prosecution against them and also for taking *suo motto* motion under the Contempt of Courts Act, this Court directed registration of FIR against officers of CBI and FIR's were registered against Mr. Ramnish Singh and Mr. Vinod Pandey, respective Investigating Officers and they are facing trail.

70. It is also noteworthy that in both the cases, RC Nos. S18/E0001/1999 and S19/E0006/1999, the respondent had assailed the orders granting sanction dated 21.06.2002 and 26.11.2002 by the competent authority,

Department of Revenue, Ministry of Finance, Govt. of India. This Court vide order dated 13.01.2016 in the matter of *Ashok Kumar Aggarwal (supra)* in W.P.(Crl) 1401/2002 and Crl. Revision Petition No. 338/2014 quashed the orders granting sanction in both the cases. While doing so, the Court had reflected upon the conduct of the CBI and held as under:-

"90. In this background, I am compelled to comment on the manner in which the investigation in the subject case has been carried out. The investigation smacks of intentional mischief to misdirect the investigation as well as withhold material evidence which would exonerate the petitioner. These proceedings asseverate to be a glaring case of suggestion falsi, suppressio veri (Suppression of the truth is [equivalent to] the expression of what is false), and hence mala fide. It does not seem to be merely a case of faulty investigation but is seemingly an investigation coloured with motivation or an attempt to ensure that certain persons can go scot free. (Ref: Dayal Singh & Ors vs. State of Uttranchal, reported as (2012) 8 SCC 263). The above conclusion can be gathered from the following facts:

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

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

c) Furthermore, the CBI relied upon the documents provided by Mr. Mandeep Kapur, Chartered Accountant of Mr. Barjatya obtained from Mr. Eric Huggenberger,

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

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

"All [men] are equal, but some are more equal than the others."

-George Orwell, Animal Farm

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

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

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

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

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

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

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

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

05.08.2011 to the Law Secretary, requesting him to reconsider his opinion."

"96. The petitioner has suffered great prejudice since 1998 on account of the prolonged litigation between him and the official respondents. He has endured suffering, humiliation and considerable trauma. A sense of dubiety has persisted qua the petitioner since long which reminds one of the lyrics in the famous song by Bob Dylan: "How many roads must a man walk down Before you call him a man?"

71. These facts are sufficient for the Court to conclude that these two criminal cases were registered by CBI with malafide intentions and it is nothing but reflection of malice of CBI against the respondent. It was during the proceedings of these cases that the charge sheets dated 13.09.2001 and 01.12.2006 were issued to the respondent, on the recommendation of the CBI. The issue is whether the competent authority, while approving the initiation of departmental enquiry and approving the memorandum of charges, applied its mind independently on the material before it. It is to be noted that the competent authority who approved the initiation of departmental enquiry and memorandum of charges, is the same which had given the sanction for prosecution of the respondent in the criminal cases. In this regard, the Tribunal had concluded that the material supporting the recommended memorandum of charges by the CBI, had not

been placed before the competent authority and the competent authority has mechanically passed the order.

72. Even at the time when the *de novo* charge sheet was issued, no fresh material for application of mind was put up before the competent authority.

On this count, the learned Tribunal has noted the following facts:-

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

"(J). Because as per CBI (Crime Manual) 1991, CBI while recommending for departmental action, a number of documents namely SP's report, draft charges, statement of imputations of misconduct, list of witnesses, list of documents, copies of relied upon documents and other relied upon documents are required to be sent to the department authorities and this requirement is mandatory and no other scope or discretion is available. In the instant case, though the CBI had recommended for departmental proceeding against the applicant vide communication dated 23.5.2002 but the relied upon documents were not sent along with the report. It was only after obtaining CVC first advice and comments of ED on the said CBI's report that it was thought desirable to seek copies of relied upon material including statements of

witnesses from CBI on 24.10.2005. Hence, the matter was processed only on the basis of CBI's report and without considering the relied upon material. Moreover, the said relied upon material was never put up to the disciplinary authority and his approval was taken on the report prepared by Vigilance Wing of the Department and as such, the entire action of initiation of disciplinary action without considering and examining the relevant documents is illegal, void and ab-initio.

XX

XXX

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

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

"(J). Contents of the ground J are baseless hence denied. It is submitted that in the present case the file was received from the Department of Revenue on 06.10.2005. The respondent's office vide letter

dated 24.10.2005 requested the CBI to provide the copies of the listed documents, The CBI vide letter dated 14.11.2005 provided the copies of the documents. A note, accordingly, was submitted to the DA along with the relevant documents for soliciting the approval for initiating the major penalty proceedings. The DA after examining the entire facts and records granted the approval for initiating the major penalty proceedings on 04.10.2006.

XXX

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(g-h). Contents of the ground G-H are misconceived and hence denied. It is submitted, that the DA after appreciating the entire material and documents on record, and independent application of mind, gave approval to initiate major penalty proceedings against the applicant. Moreover, the reference of the facts in the present OA, as stood at the time of pendency of the earlier quashed charge sheet, has no relevance, in view of the liberty granted by this Hon'ble Tribunal vide order dated 24.02.2010."

73. In view of the discussion by the Tribunal in the impugned order, in paragraphs 46 and 47 (reproduced in paragraph 57 of this order), based on the findings of the facts, the conclusion of the Tribunal that there was no application of mind by the authorities cannot be faulted. The learned ASG could not invite our attention to produce anything to the contrary.

74. From these facts, it is apparent that at the time when the disciplinary authority was considering the issue of initiation of the departmental enquiry

and approval of the charge sheets, the complete set of material was not placed before it.

75. The charge memorandum dated 14.03.2014 was accompanied by Statement of Imputations of articles of charge and the list of documents by which the article of charge were proposed to be proved. It contains the list of witnesses and the gist of their evidence. It is an admitted fact that though the gist of the evidences, the witnesses might depose, had been recorded, no copy of the statements of these witnesses was placed before the disciplinary authority at the time when they were required to take an informed and conscious decision of approval of initiation of disciplinary enquiry and approving the memorandum of charges. Therefore, it is clear that the disciplinary authority has not gone through the statements of witnesses but had acted on the basis of gist of evidence of the witnesses which has been forwarded by the CBI.

76. Similarly, the statements of imputation of charges in the memorandum of charges dated 20.03.2014 are verbatim to earlier memorandum of charges dated 13.09.2001, pursuant to which disciplinary proceedings were conducted, wherein, the petitioners had failed to prove the articles of charges. The Tribunal has in paragraph 25 of the impugned order,

discussed in detail the said facts. This Court in paragraph 58 of this order has reproduced the said findings of the Tribunal and the same are not repeated herein. It is apparent that despite the fact that the competent authority has failed to prove the allegations in the earlier charge sheets dated 13.09.2001, it without application of mind, issued the fresh memorandum of charges in verbatim. This is a classic case of non-application of mind.

77. As regards the charge sheet dated 01.12.2006, indisputably, it relates to an incident that happened in the year January 1998, but the first charge sheet was issued only on 01.12.2006, on a belated complaint made by Sh. Pawanjit Singh after about two years of the alleged incident i.e. in 2000, and for six years thereafter, no action was proposed on this complaint of Sh. Pawanjit Singh, when suddenly the CBI woke up in 2006 and recommended the memorandum of charge to the competent authority for the conduct of a disciplinary enquiry. These facts show bias and are motivated acts done on them with the sole intention to harass the respondent, against whom they were litigating before various Courts. Even the note dated 30.10.2002 of Mr. B.P. S Bisht, Addl. DIT (Vig) (HQ), so reflects, the note reads as under-

“33- xxxx xxxx xxx

3.1..... . *The CBI report arbitrarily absolves the ED officials who actually conducted the search and subsequent inquiry, The statements of these officials, who were themselves directly involved in the execution of the search and inquiry, seem to be self serving and intended only to shift the blame from themselves....."*

CONCLUSION

4.*There is no evidence to show that he was involved in the harassment of Sh. Pavanjit Singh, of other than the statements of officials who were directly involved in the so called harassment and who were prima facie to blame for the same.*

The fact that despite and contrary to this opinion of the additional DIT (Vig) (HQ) without any additional material being presented, the authorities had approved the initiation and granted approval to the recommended memo of charge sheet of CBI, clearly shows that they have acted solely at the behest of CBI, who had all along been acting with bias against the respondent.

78. In **M.V.Bijlani Vs. Union of India & Ors, (2006) 5SCC 88**, the Supreme Court has held that the charge sheet can be quashed when issued with a delay of six years and where sufficient material was absent.

79. The Hon'ble Supreme Court in the case of State of A.P vs. N. Radhakishan, (1998) (4) SCC 154, has clearly held that delay is a valid ground, to quash the charge memos. The Court ruled as under:-

"19.The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration is that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

(emphasis supplied)

80. Also in the case reported as **State of Punjab and Others Vs. Chaman Lai Goyal (1995) 2 SCC 570**, the Hon'ble Supreme Court has clearly opined that delay is fatal and if it is too long or unexplained, the Courts are within its jurisdiction to quash the charge sheets and also that such delays in some way, lend support to the allegation of bias, malafides and misuse of power. Paragraph 9 of the judgment reads as under:-

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

(emphasis supplied)

81. The legal bias and malafide in this case are writ large on the face of it. The mechanical review of suspension order for 13 years and extending it further despite its quashing by the Tribunal reflects on the conduct of the petitioners as well. This Court in W.P. (C) No. 5247/2012 between the parties deprecated such conduct in its order dated 17.09.2012.

"18. No doubt, delay in completing departmental proceedings is by itself is no grounds to quash a suspension order, but at the same time, the issue of delay has to be factored along with such other contentions which the suspended civil servant projects with reference to the facts. It then becomes the duty of the decision making authority to take an informed decision, which would mean to take not of the admittedly relevant facts and circumstances, which in this case are the six facts and circumstances, highlighted by the Tribunal in its order dated December 16, 2011, all of which do not find a mention in the decision which has been quashed by the Tribunal, and for which we would only state even CBI has failed to comment upon; resulting in an uncanny feeling generated in a judicial mind: that neither CBI nor the department has an answer to the same."

82. Further the conduct of the authorities, that instead of complying with the order, they challenged it in Civil Appeal No. 9454/2013, shows their vindictive attitude. The Supreme Court took this act of commission very seriously and observed as under:-

"24. It is astonishing that ,in spite of quashing of the suspension order and direction issued by the Tribunal to re-instate the respondent, his suspension was directed to be continued, though for a period of six months, subject to review and further subject to the outcome of the challenge of the Tribunal's order before the High Court. The High Court affirmed the judgment and order of the Tribunal dismissing the case of the appellants vide impugned judgment and order dated 17.9.2012. Even then the authorities did not consider it proper to revoke the suspension order."

83. The contemptuous act of the authority is also apparent from the fact that, even after the order of the Tribunal dated 01.06.2012, and its confirmation up to the Supreme Court, the suspension order was quashed by the authorities w.e.f. 06.01.2014, in utter disregard and violation to the directions of Tribunal to do so w.e.f. 12.01.2012. The respondent was left with no option but to challenge this act of the authorities, by filing Contempt Petition No. 116 of 2014, in Civil Appeal No. 9454/2013.

84. The petitioners too were not lagging behind the CBI when it came to harassing the respondent. After the suspension order was revoked, they transferred him in gross violation of the transfer policy and it was only on the intervention of the Court that the transfer order was cancelled. The authorities still challenged the said order before this Court and obtained an *ex-parte* stay on 24.12.2014. The respondent filed an application under

Section 340 CrPC for perjury, alleging that it was obtained on false presentation of facts. Not only was the stay vacated by the Court on 09.01.2015, but the petitioners were allowed to withdraw the said writ petition on 12.02.2015, on their undertaking, to post the respondent in Delhi. Despite the said undertaking, the respondent was not given any posting for 11 months and was given one only on the intervention of the Court, and this conduct shows nothing but malice.

85. The Hon'ble Supreme Court in *V.K. Khanna's(supra)* case has held that when the administrative actions are coloured by bias and malice, the Courts are within their jurisdiction to quash the charge sheets. The Court has also held that the existence of element of bias depends on the facts and circumstance of each case and can be judged from the surrounding circumstances of the case. The Court has held as under:-

"8. 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, the question of declaring them to be unsustainable, on the basis therefore, would not arise."

"25. Bias admittedly negates fairness and reasonableness by reason of which arbitrariness and mala fide move creep in.....The expression "mala fide" has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide - actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the Act."

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."

(emphasis supplied)

86. The totality of the facts and circumstances of the case clearly show the bias on the part of authorities of such a nature which constitutes malice and malafide. The malice and malafide has been repeatedly deprecated, while dealing with the matters between the parties, i.e., the respondent, CBI and the petitioners. We are, therefore, of the view that the Tribunal has rightly concluded on the basis of undisputed facts and circumstances and after recording in details the reasons for reaching such conclusion that the charge sheets were vitiated. We find no infirmity and illegality in the impugned order which warrants interference. The writ petitions resultantly are without merit and are hereby dismissed, along with all pending applications, with no order as to cost.

**DEEPA SHARMA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

MAY 24, 2018

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