(31) The above noted appeales are disposed of accordingly with no order as to costs.

R.N.R.

Before Jawahar Lal Gupta & N. C. Khichi, JJ.

V. K. KHANNA,—*Petitioner*

versus

UNION OF INDIA & OTHERS,—*Respondents.*

CWP No. 8150 of 1998

21st December, 1998

Constitution of India, 1950—Art. 226—Writ petition to stall an enquiry or to even quash a charge sheet—Maintainability of such writ petition.

Held that a writ Court does not normally intervene to stall an enquiry or to even quash a charge sheet. However, in the present case we are satisfied that silence shall not be the right option. When things are ill done, silence is a sin. The present case falls in the category of the rarest of the rare cases where the court should intervene to prevent infliction of injustice.

(Para 103)

Constitution of India, 1950—Art. 226—Jurisdiction of State Government to initiate disciplinary proceedings against an IAS Officer—Inquiry against the petitioner—Documents claimed not provided to the petitioner—Whether denial of reasonable opportunity.

Held that the State Government had power to initiate disciplinary proceedings against a member of the Indian Administrative Service under the rules.

(Para 103)

Further held that there was a denial of reasonable opportunity to the petitioner as he was not given copies of the documents or permission to inspect the record. The action was violative of the principles of natural justice. The respondents have not followed the basic rules and norms for a just and fair enquiry. They have violated the minimum guarantee that the officer shall be given an effective

opportunity to submit a reply to the charge sheet and that his reply shall be objectively considered before a decision to hold a regular equiry is taken. In the present case respondent No. 4 had announced that strict and harsh action shall be taken against the petitioner. The Chief Minister had made an announcement regarding the decision to appoint an enquiry officer even before the period for the submission of the reply as granted to the petitioner had expired.

(Para 103)

D.S. Nehra, Senior Advocate with Arun Nehra and Ranjan Lakhanpal, Advocates,—*for the Petitioner.*

For the Union of India—*Respondent No. 1—Nemo*

For the State of Punjab—Rajinder Sachar, Senior Advocate with Hemant Gupta, Addl. Advocate Genenral, Punjab for S. Parkash Singh Badal, Chief Minister and Mr.R. S. Mann, IAS, Chief Secretary, Punjab—Respondent Nos. 3 and 4 Deepak Sibal, Advocate.

For Bikramjit Singh, IAS, Principal Secretary, Irrigation & Power—Respondent No. 5 Mohinderjit Singh Sethi, Sr. Advocate with Amit Sethi, Advocate.

For the CBI—Respondent No. 6—R. K. Handa, Advocate.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Is the action of the respondents in issuing the impugned charge sheet to the petitioner like using a hammer to swat a fly on his forehead ? Are the respondents merely talking of principles, but actually acting on interest ? This is the core of the controversy in this writ petition. What is the case in a nutshell ?

(2) The petitioner, during his tenure as Chief Secretary, had in pursuance to the express orders of the then Chief Minister referred two cases to the Central Bureau of Investigation. The first of these cases related to the "amassing of assets disproportionate to the known means of income by Mr. Bikramjit Singh, I.A.S.". The second case was about the "allotment of land and funds to the Punjab Cricket Association." The Government changed. Soon thereafter the petitioner was charge sheeted *inter alia* for having "acted in a *mala fide* manner, in gross violation of established norms and procedures of Government functioning in utter disregard of All India Service

Rules, principles of objectivity, fair play, integrity and the high morals expected of a senior civil servant" in referring the aforesaid two cases to the CBI.

(3) The petitioner questions the validity of the charge sheet. He claims that he had referred the two cases to the Central Bureau of Investigation in compliance with the express orders of the then Chief Minister, Mrs. Rajinder Kaur Bhattal. After the election, Mr. Parkash Singh Badal, Respondent No. 3 had become the Chief Minister. Mr. R. S. Mann, Respondent No. 4 a relative of the Chief Minister, was appointed as the Chief Secretary by superseding more than ten senior officers with good record. Mr. Bikramjit Singh, Respondent No. 5 was posted as the Principal Secretary to the Chief Minister despite the fact that enquiries were pending against him. Having come to power, the respondents made every possible effort to stifle the investigation. They rescinded the notifications by which the two cases had been referred to the CBI. They even threatened the CBI with the use of state machinery to enforce their orders and to restrain it from continuing with the investigation. However these efforts had failed as, on a public interest litigation being initiated, the High Court had intervened and quashed the orders passed by the Government. The CBI was directed to investigate. The allegations in the two cases have been found to be *prima facie* correct. Despite that, the petitioner has been unfairly charge-sheeted and an enquiry is sought to be conducted against him. He alleges that the charge-sheet against him is "the direct outcome of the reference of the two cases to the CBI and is overtly *malafide*." His challenge to the charge-sheet having been negatived by the Central Administrative Tribunal,—*vide* order dated 16th April, 1998, he has approached this court through this petition under Article 226 of the Constitution.

(4) The sequence of events leading to this case and the pleadings of the parties may be briefly noticed.

(5) The petitioner was appointed to the Indian Administrative Service in the year 1963. Today, he claims to be next to the Cabinet Secretary in seniority at the All India level. The petitioner has held different posts during the last 35 years. On July 2, 1996, he was appointed as the Chief Secretary. At that time, Mr. Harcharan Singh Brar was the Chief Minister. Subsequently, Mrs. Rajinder Kaur Bhattal had succeeded him.

(6) On 6th February, 1997, Mrs. Bhattal, the Chief Minister sent a note to the petitioner. She asked for the files relating to two

cases. The first of these cases was regarding the amassing of assets disproportionate to "known means" by Mr. Bikramjit Singh, I.A.S. The second case was regarding the allotment of 15 acres of government land by the sports department to the Punjab Cricket Association in Mohali. The petitioner had pointed out the factual position and recorded his own observations in the two separate notes forwarded by him to the Chief Minister on the same day. Thereupon, the Chief Minister had passed two separate orders.

(7) With regard to the case of Mr. Bikramjit Singh, the Chief Minister had observed as under :—

> "I have gone through the Enquiry Report of Vigilance Bureau as well as other portions of the file. I am in agreement with Chief Secretary that this case has not been properly probed. Since officer is senior and influential, another enquiry by the State machinery may not be appropriate. This case may, therefore, be referred to the CBI for enquiry. Reference may be made immediately."
>
> Sd/-
> C.S.C.M./6.2.97.

(8) With regard to the case relating to the allotment of land, she *inter alia* directed as under :—

> "The illegal occupation of the Cricket Association should be got vacated. . . So far as the culpability of the officers involved is concerned, considering that they are senior officers and influential enough to interfere in the conduct of an enquiry by a State Government Agency, this case should be investigated by an independent agency like the CBI to detect financial irregularities, misappropriation, loss caused to the State Government and any other illegal acts in the name of sports promotion culpable under the existing laws."
>
> Sd/-
> C.S.C.M./6.2.97.

(9) In obedience to these orders, the petitioner had referred the two cases to the CBI. On 7th February, 1997, he had recorded that " a notification referring the matter to the CBI has been issued..."

(10) On the same day viz. 7th February, 1997, elections to the State Legislative Assembly were held. The votes were counted on 9th February, 1997. At the conclusion of the counting, the result was declared. The Congress Party was defeated. On 12th February, 1997, the Chief Minister Mrs. Bhattal resigned and Parkash Singh Badal, respondent No. 3 was sworn in as the Chief Minister. Soon thereafter, he had gone to Amritsar. He had returned to Chandigarh on 14th February, 1997 and attended the office.

(11) On 14th February, 1997 itself, the Chief Minister, Mr. Parkash Singh Badal passed two orders.

(12) By the first order, he directed that—

> "Shri R. S. Mann, IAS, be appointed as Chief Secretary to Government Punjab in place of Shri V. K. Khanna, IAS with immediate effect."

(13) Mr. V. K. Khanna the petitioner was, thus, ordered to be replaced by Mr. R. S. Mann, respondent No. 4.

(14) On the same day, the Chief Minister passed another order that—

> "Shri Bikramjit Singh, IAS be appointed as Principal Secretary to the Chief Minister, Punjab, in place of Shri S. S. Dawra, IAS, with immediate effect."

(15) On receipt of these orders, a note was recorded by an officer (Ms. K. Sidhu–Page 3 of the compilation of papers given by Mr. Sachar to the Court) pointing out *inter alia* that—

> "Mr. R. S. Mann belongs to the 1965 batch. With his appointment as Chief Secretary, he will be superseding 10 officers in the State. Four of these officers (including Mr. V. K. Khanna) are in the scale of Rs. 8,000 P.M. The remaining six officers would have to be given this scale also. This is against the rules."

(16) It was further observed that—

> "Mr. Bikramjit Singh has one regular enquiry pending against him in the Vigilance Department and two complaints of alleged favouritism and corruption pending against him."

(17) The petitioner endorsed this note to the Chief Minister on the same day viz. 14th, February, 1997. Regardless, totally ignoring the note, the Chief Minister stuck to his view. He ordered that the two officers be appointed. The directions were immediately carried out.

(18) The petitioner alleges that thereafter he left for Delhi on 18th, February, 1997, and returned to Chandigarh on 23rd February, 1997. At about 9 PM on the same day, the file relating to the case against Mr. Bikramjit Singh, was handed over by him to Mr. R. S. Mann, the Chief Secretary. On 25th February, 1997, the Central Bureau of Investigation, registered the two cases *vide* FIR Nos. 7 and 8. One of these cases was against respondent No. 5—Mr. Bikramjit Singh. The second case was regarding the transfer of land to the Punjab Cricket Association. On the next day viz. 26th February, 1997, the petitioner handed over the file relating to the transfer of land to the Cricket Association to the Chief Minister at about 3 PM.

(19) It appears that the respondents were not happy when they learnt about the registration of the two cases. Immediately, on 26th February, 1997, Mr. R. S. Mann, the Chief Secretary, Punjab, respondent No. 4, addressed a press conference. A copy of the report as it appeared in the Tribune of 27th February, 1997, has been produced as Annexure P. 1 with the writ petition. It was *inter alia* reported that the two notifications had been issued to embarrass the Government. The Government would "mete out whatever punishment or disciplinary action (strict and harsh) was possible against Mr. Khanna since it was a deliberate attempt to act with vendetta." According to the report, it was "perhaps, the first time in the history of Punjab and in the Haryana...that a Chief Secretary or State Government had sent a case to the CBI against its own officers." It was, still further, disclosed that the government had "now withdrawn, cancelled or what is technically called rescinded those notifications."

(20) The compilation of the extracts from the files as given to the court by the counsel for the State of Punjab shows that even the file relating to the allotment of land to the Punjab Cricket Association had become available to the Chief Secretary on 26th February, 1997. On 27th February, 1997, a note was recorded by

the Principal Secretary, Vigilance, in which it was *inter alia* observed that :—

> "the whole matter suffers from serious legal infirmities and the decision taken looks not sound and is based on *malafide* considerations. The happenings in this case are totally similar to that of a case concerning Shri Bikramjit Singh, PSCM. Keeping in view the record and faulty/*malafide* decision, we may withdraw the case from the CBI and rescind the notification issued on 7th February, 1997. If CS/CM agrees to the proposal, draft notification placed below rescinding the earlier notification may be issued immediately."

(21) This note appears to have been placed before the Chief Secretary, Mr. Mann and, thereafter, the Chief Minister, Mr. Parkash Singh Badal who observed as under :

> "This has been discussed with the Chief Minister and Advocate General on more than one occasion in the last two days, along with the other case of similar nature viz. involving reference to CBI for investigation against Shri Bikramjit Singh, PSCM. As in the other case, the action of then CS/CM clearly smacked of malice, vendetta and gross violation of established norms and procedure. Accordingly, I endorse the suggestion of PSV at 'X' on Page 6.
>
> Sd/-
> R.S. Mann
> CS/27.2
>
> CM Sd/-
> Parkash Singh/27.2"

(22) On 28th February, 1997, the Principal Secretary Vigilance recorded that the notification had been issued.

(23) On 5th March, 1997, Mr. Surjit Singh, Principal Secretary, Department of Vigilance sent a secret communication to the Departments of Finance, Housing and Urban Development and Sports with a request to "send all relevant record with regard to the allotment of land by the PUDA for construction of Cricket Stadium at Mohali, disbursement of funds by PUDA/State Government or any other relevant information which may be available with you or with your department or with any of its statutory organisation

including corporations, statutory bodies, registered societies working under administrative control of your department." It was further observed that "the State Government is in correspondence with the CBI regarding the lagality or otherwise of continuing with the investigation...You are therefore advised that if any official of the CBI approaches you for record or any examination of the concerned officials, he may kindly be advised to approach either the department of Vigilance or the department of General Administration."

(24) It appears that on the next day viz. 6th March, 1997, a communication was sent by the State Government to the Director, CBI, in which it was observed that—

> "So long as the orders of Government of Punjab are issued and standing, the Government of Punjab is bound to use its machinery to enforce its orders. It is hoped that the CBI would not create any unpleasant situation for itself and the Government of Punjab by insisting on further investigation.
>
> You are, therefore, in the light of what has been stated above, advised to immediately stop investigation in the cases of Mr. Bikramjit Singh and transfer of land at Mohali by PUDA to PCA. The Government has advised the concerned parties not to part with any record to the CBI. You are also further advised to desist from further taking any action towards investigation against any of the officers of the Punjab Government immediately in the light of the fact that consents specifically stand rescinded."

(25) This was a clear threat to use the State machinery against the CBI, by a state government. Probably, for the first time. Hopefully, for the last time also.

(26) On 23rd April, 1997, Mr. Gurbir Singh, son of the late Mr. Justice Gurnam Singh, filed CWP No. 5428 of 1997 by way of a Public Interest Litigation. He prayed that directions be issued to the State Government to suspend the officers including Mr. R. S. Mann and Mr. Bikramjit Singh, respondent Nos. 4 and 5 in the case, or to send them on leave till "the CBI completed the enquiry against them." A Division Bench of this court had ultimately allowed the writ petition on 23rd July, 1997. Reference to the orders passed by the Bench while deciding the case will be made at an appropriate stage.

(27) A day later, on 24th April, 1997, the impugned charge sheet was issued to the petitioner. A copy thereof has been produced as Annexure P. 3 to the writ petition. The petitioner was asked to submit his reply within 21 days. The action was proposed to be taken against him on the charges which were "based on the statement of imputation of misconduct appended thereto." The statement of imputation of misconduct reads thus :—

"Shri V. K. Khanna, IAS, while posted as Chief Secretary to Government, Punjab, issued two notifications in the Delhi Special Police Establishment act empowering the CBI to enquire into the two matters viz. :—

(i) Amassing assets disproportionate to the known means of income by Shri Bikramjit Singh, IAS ; and

(ii) Allotment of land and funds to the Punjab Cricket Association.

The CBI registered FIRs in these two cases. In processing these cases, Shri V. K. Khanna, IAS, acted in a *mala fide* manner and in gross violation of established norms and procedures of Government functioning and in utter disregard of All India Service Rules, principles of objectivity, fair play, integrity and the high morals expected of a senior civil servant.

2. Shri V. K. Khanna, IAS, processed the cases with undue hurry and undue interest, not actuated by the nature of cases. This is demonstrated by the following :—

(i) Even though elections were on and polling took place on 7th February and the then C. M. was in her constituency, away from Chandigarh, most of the action was completed on 6th February and on 7th February which was a holiday. The papers travelled thrice between Chandigarh and Lehragaga on 6th February.

(ii) Neither in her first note of 6th February nor in her second note of the same day did the C. M. direct that the cases were to be handled at breakneck speed.

(iii) The statutory notifications issued on 7th February were neither sent to the L. R. as required by Rules of Business of Punjab Government nor were they sent for gazetting as required by law.

3. Shri V. K. Khanna, IAS, antedated and fabricated the record. Some of the actions/noting, which is shown to have been done on 6th and 7th February, 1997, was actually done on 8th February, 1997. This is established by a fact-finding enquiry conducted by Shri Surjit Singh, IAS, Principal Secretary, Vigilance. The Notifications and the letters addressed to the Director, CBI were issued and forwarded to the Director, CBI any time after 8th February, 1997 A.N. and were predated as on 7th February, 1997.

4. Shri V. K. Khanna, IAS, with malicious intent kept the entire operation a closely guarded secret until the CBI had completed all formalities and had registered the FIRs. This is demonstrated by the following facts/events :—

(i) All papers pertaining to these cases were taken away from the personal staff of C.S. and were handled and retained entirely by Shri Khanna himself including delivery of the Notification and letters to CBI.

(ii) He took away the files and retained them till the night of 24th February, 1997 in one case and 26th February, 1997 in the other case, whereas the CBI registered cases on 25th February, 1997.

(iii) He did not mention anything about these two sensitive cases to the new Chief Minister and Chief Secretary after formation of the new Government, though he met them formally and informally several times before handing over charge as the Chief Secretary.

(iv) When the file for appointment of Shri Bikramjit Singh, IAS, as principal Secretary to Chief Minister was put up to C.M. on 14th February, 1997, while pendancy of Vigilance enquiries against him was referred to, no reference whatsoever, was made to the most relevant fact that less than a week earlier, a case of corruption against him had been sent to CBI—a fact which was known only to Shri Khanna

and which must have been very fresh in his mind in view of the unusual interest taken in it by him.

5. Shri V. K. Khanna, IAS, failed in the proper discharge of his duties as Chief Secretary, when while putting up to C.M. the file pertaining to the appointment of Shri Bikramjit Singh as Principal Secretary to Chief Minister on 14th February, 1997, he did not record the important and most material fact that a case of corruption against Shri Bikramjit Singh has been referred to the CBI only a week earlier.

6. Shri V. K. Khanna, IAS, falsely recorded in the files that the Advocate General had been consulted in these cases. In fact, no such consultation took place.

7. Shri V. K. Khanna, IAS, after handing over the charge as Chief Secretary on 14th February, 1997 A.N. returned the two files on the above two cases on 15th February, 1997 to an officer of the Vigilance Department. The same day he summoned the two files without authority and detained them for a long time with ulterior motives. He recalled both the files on the plea that the files being top secret in nature would be handed over to the Additional Secretary, Vigilance. However, the two files were returned on 24th and 26th February, 1997. He, therefore, remained in unauthorised possession of these two files after handing over charge as Chief Secretary.

8. Shri V. K. Khanna, IAS, did not make any proper attempt to verify the assertions and allegations in his note dated 6th February, 1997 and in the note of the then C.M. of the same date in the P.C.A. case. No proper preliminary enquiry was conducted in the matter nor was any opportunity to explain given to those who might have been adversely affected by the decision. These are the most elementary prerequisite to any such decision by a civil servant. No serious effect was made to ascertain the full facts. Whereas the record shows that the decision to give land at nominal cost and the release of funds had the clear and repeated apporval of the Housing Board/PUDA, Finance Department and the then C.M. and whereas the Council of Ministers and even Vidhan Sabha had categorically endorsed these decisions, none of these facts

was brought on the file. His entire conduct was malicious and premeditated and amounted to total abuse of the authority vested in him.

9. Shri V. K. Khanna, IAS, in referring these cases to CBI violated Election Code issued by Election Commission of India. He also violated Government instructions issued by himself as Chief Secretary on 10th February, 1997 under which it was stipulated that in view of impending change of Government, no important cases were to be disposed of by Secretaries to the Government without showing them to the new Ministers who were to take office shortly. That these two cases were important is proved by the attention paid by Shri V. K. Khanna. In fact, there was a clear intention on the part of Shri V. K. Khanna to complete all action in these cases before the new ministry took office. Shri V. K. Khanna, further failed to put up these cases for the information/approval of the new Chief Minister till he handed over the charge as Chief Secretary late on 14th February, 1977."

(28) On receipt of this charge sheet, the petitioner submitted applications during the period from 28th April, to 13th May, 1997 requesting the authorities to supply copies of certain documents. These have been collectively placed on record as Annexures P. 5 and P. 6 with the writ petition. The request was in conformity with the stipulation in the charge sheet. The Government gave the reply,—*vide* letter dated 26th May, 1997. The petitioner was informed that "the file relating to the Vigilance enquiry against Shri R. S. Mann, IAS and Ms. Tejinder Kaur relating to transfer of Housing Board funds from Nationalised Banks to AMRO Bank cannot be made available to you as it is nowhere relevant to the charge sheet." With regard to the other files, he was informed that these "will be shown druing the enquiry, if declared relevant by the Enquiry Officer." A copy of this Communication is on record as Annexure P. 7 with the writ petition. Presumably, on account of the delay in decision on the petitioner's request, the time given to him for submission of the reply to the charge sheet was extended upto 16th June, 1997.

(29) Soon after the issue of the charge sheet on 24th April, 1997, and even before the petitioner could have responded, the Chief Minister announced on 27th April, 1997, that "a Judge of the High Court would look into charges against Shri V. K. Khanna, former

C. S., Punjab, after the receipt of his reply to the charge sheet served on him by the Government." A copy of the report, which appeared in the press, has been produced as Annexure P. 4 with the writ petition. It deserves notice that this announcement had been made just 3 days after the charge sheet had been issued to the petitioner. The government had given 21 days' time to the petitioner for submission of the reply.

(30) On 5th June, 1997, the petitioner approached the Central Administrative Tribunal praying *inter alia* that the charge sheet be quashed. He also prayed that the memorandum dated 26th May, 1997 by which the copies of the documents had been declined, be quashed. His claim having been rejected by the Tribunal, the petitioner has filed the present writ petition. It is alleged that the Chief Minister "has not applied his mind independently...while taking decision to initiate the disciplinary proceedings...The charge-sheet is the direct outcome of the reference of the two cases to the CBI..." The petitioner prays that the order of the Tribunal be set aside and that the charge-sheet be quashed.

(31) No written statement has been filed on behalf of the Union of India, respondent No. 1. No one appeared on its behalf during the hearing. Thus, any reference to the respondents shall hereinafter shall not include the UOI.

(32) On behalf of the State of Punjab, the written statement has been filed by the Secretary, Personnel. It has been *inter alia* averred that "the petitioner has been charge-sheeted not for referring the two cases to the CBI, but for his conduct in doing so. He is charge-sheeted *inter alia* on the ground that he acted in *mala fide* manner in gross violation of established norms and procedure of the Government functioning, in utter disregard to the norms of objectivity, fair-play, integrity and high morals expected from a senior civil servant while referring the cases to the CBI. The petitioner has been charge-sheeted for not properly examining the two cases and for showing undue haste not actuated by the nature of cases. He fabricated the record, kept the entire operation a closely guarded secret. He did not inform about it to the new Chief Minister and the new Chief Secretary. In the file pertaining to the appointment of Mr. Bikramjit Singh as Principal Secretary to the Chief Minister, even though, it was recorded that a vigilance enquiry is pending against the officer, the facts regarding the notification for the investigation by the CBI were not mentioned, so much so that he kept the two files in his personal custody even after handing

over the charge as the Chief Secretary." Various averments made in the petition have been controverted. Detailed reference, if necessary, shall be made at the relevant stage.

(33) S. Parkash Singh Badal, the Chif Minister, has also filed a short affidavit. It has been *inter alia* averred that he had ordered the "issuance of a charge-sheet to the petitioner after applying his independent mind and after considering all the relevant facts." It has been further averred that "he has no personal malice or *mala fide* against the petitioner...."

(34) In the reply filed by Mr. R.S. Mann, respondent No. 4, it has been *inter alia* stated that the petition is premature. The departmental enquiry against the petitioner is in progress. The issues raised by him in the petition "have in fact been taken up by the petitioner before the enquiry officer." The petitioner has already filed repy to the charges. It has been further pointed out that the suggestion that an FIR is pending against respondent No. 4 or that the petitioner has been charge-sheeted on that account, is wrong. Various other averments made in the petition have also been controverted.

(35) In the reply filed by repondent No. 5, the list of properties acquired by the petitioner has been given. It has been alleged that the petitioner had acquired "large property by misusing his office." Details regarding his properties etc. have been given. The repondents have further pointed out that a retired Judge has been appointed as the Enquiry Officer and that the petitioner can lead evidence to prove the factual position.

(36) Besides the above noted pleadings, the petitioner has filed a replication to which the repondents have responded by filing their rejoinders.

(37) This is the sequence of events.

(38) Mr. D.S. Nehra, learned counsel for the petitioner contended that there is an "inextricable link" between the cases registered by the CBI and the charge-sheet issued to the petitioner. According to the counsel, it is a "typical case of vengeance." The real object of the repondents was to stall the investigation and to create a defence. Respondent Nos. 4 and 5 were holding key positions. They had managed to get the petitioner charge-sheeted on account of their close proximity to the Chief Minister. The counsel maintained that the respondents had acted *mala fide*. It was a

colourable exercise of power. The order deserved to be quashed. Secondly, the counsel submitted that the respondents had denied copies of the documents to the petitioner and appointed the Enquiry Officer even before he had submitted a reply to the charge-sheet. The proceedings were being conducted "in camera." Even a reasonable opportunity was not being granted. Copies of the documents were denied even by the enquiry officer on the ground that these were not relevant. The assistance of Mr. R.S. Dass, a retired Member of the Service who is now a practising lawyer was not allowed. When the petitioner requested the Enquiry Officer to ask the Ministry of Personnel to permit Mr. Harinder Singh, Joint Secretary to assist him the prayer for help was declined. The counsel referred to the allegations made in paragraph 4 of the replication in CM No.17188 of 1998 to contend that the enquiry officer was not proceeding fairly. It was next submitted that even the charge-sheet does not disclose any misconduct so as to warrant any enquiry. It is only a device to create a defence for the Regular Cases registered by the CBI. A faint attempt was also made to show that the State Government had no jurisdiction to *initiate* the disciplinary proceedings and that the power could have been exercised only by the Central Government.

(39) Mr. Rajinder Sachar, who appeared for the State of Punjab, controverted the claim made on behalf of the petitioner. It was contended that the petitioner had acted with indecent haste and in bad faith. A preliminary enquiry was conducted. Mr. Surjit Singh had submitted a report which indicated that the record had been fabricated and that the documents had been antedated. The elections to the Assembly having taken place, the petitioner should have "withheld further action on her (the CM's) directions." He further contended that the Government has taken no action against the petitioner so far. It had only initiated the departmental enquiry. The petitioner had no cause of action. The Tribunal had rightly rejected the petitioner's claim. Thus, no ground for interference was made out. It was further submitted that the charges against the petitioner are different from the issue, which arise in the cases registered by the CBI. No ground for staying the proceedings is made out. To illustrate the counsel submitted that the petitioner had acted in violation of Rule 48 of the Rules of Business. This matter was not pending investigation with the CBI. Thus, no ground for quashing or even staying the proceedings was made out.

(40) Mr. Mohinderjit Singh Sethi, learned counsel for Mr. Bikramjit Singh, contended that respondent No. 5 had already been exonerated of the charge of disproportionate assets,—*vide* order dated 13th December, 1994 passed by the then Chief Minister Mr. Beant Singh. The petitioner had acted unfairly in not pointing out this fact to the Chief Minister. It was also suggested that the petitioner has assets well beyond his known sources of income. His name finds mention in the list of bureaucrats who were alleged to be in the CBI net. The fifth respondent is in fact a victim and not a culprit. He had not dealt with the case. The allegations of *malafides* against him are wholly baseless.

(41) Mr. Deepak Sibal appeared for Mr. Parkash Singh Badal, the Chief Minister and Mr. R.S. Mann, the Chief Secretary, respondent Nos. 3 and 4 respectively. Learned counsel pointed out that the fourth respondent is not an accused person in the cases registered by the CBI. The allegations of *malafides* have been denied. The charge-sheet was issued after consultation with the Advocate General. On this basis, the counsel maintained that no ground for interference was made out.

(42) In view of the pleadings and the contentions raised by the counsel, the questions that arise for consideration are:—

(1) Have the respondents acted *bona fide* in issuing the impugned charge-sheet and starting the enquiry proceedings against the petitioner?

(2) Does the chargesheet disclose any misconduct, which may warrant an enquiry against the petitioner? Was the petitioner denied a reasonable opportunity ?

(3) Has the state Government no jurisdiction to initiate the proceedings against the petitioner ?

(4) Has the Central Administrative Tribunal erred in rejecting the petitioner's claim ?

(5) Can the writ court interfere with the proceedings at this stage of the case ?

Reg:(1) IS THE ACTION BONAFIDE ?

(43) Indisputably, duty is like debt. It must be discharged without delay or demur. A civil servant must perform his duties honestly and to the best of his ability. He must abide by the Rules.

He should live by the discipline of the service. He must act without fear or favour. He must serve to promote public interest. He must carry out the lawful directions given by a superior. In fact, the Constitution of India has a chapter that enumerates the Duties of the Citizens of this country. Art. 51-A contains a positive mandate. It requires every citizen "to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement." This provision can be the beacon light for every citizen and the "*mantra*" for every civil servant. So long as he performs this duty as imposed by the Constitution and strives towards excellence, he has none and nothing to fear. Even God would be by his side.

(44) At the same time it is undeniably true that whenever there is a dereliction in the performance of duties by the civil servant, the State Government has the right to intervene and punish the guilty. This is the undoubted prerogative of the State. But, to borrow the words of Professor Wade, this power has to be used "for the public good." The action of the authority must be fair and reasonable. It should be *bonafide*. It should not be arbitrary. It should not be based on extraneous considerations. It should be for public good. Bias or personal malice should not taint it. Bias is like a drop of poision in a cup of pure milk. It is enough to ruin it. The slightest bias would vitiate the whole action.

(45) What is the position in the present case ?

(46) The sequence of events as noticed above shows that the Chief Minister Mrs. Rajinder Kaur Bhattal had asked the petitioner for certain information. He had supplied it. He had put up the files. Thereafter, on February 6, 1997, she had, after examination of the matter, directed him to refer the cases to the Central Bureau of Investigation. In one of the two cases, the direction was that the "reference be made immediately." The petitioner had complied with the directions in both the cases. He had faithfully and promptly carried out the mandate. He had unhesitatingly executed the orders passed by the Chief Minister.

(47) After the change in Government, the officer against whom the CBI had registered the case comes to be the Principal Secretary to the Chief Minister. Soon thereafter, the petitioner is accused of having processed the cases in a *malafide* manner. He has been even charged with having acted in "gross violation of established norms and procedure." It has been alleged that he

disregarded the All India Service Rules, principles of objectivity, fair play, integrity and the high morals expected of a senior civil servant. How? Is it because the petitioner did not disobey the orders given by the Chief Minister? Or is the whole noise being made because the petitioner's action did not particularly suit respondent Nos. 4 & 5 ?

(48) The new ministry was sworn in on 12th February, 1997. The Chief Minister had attended the office (probably for the first time) on 14th February, 1997. He had passed written orders for the appointment of respondent Nos. 4 and 5 as the Chief Secretary and the Principal Secretary respectively. It was pointed out that there were 10 officers in the State who were senior to respondent No. 4. Factually, it was admitted by the counsel for the State of Punjab that respondent No. 4 was at No.14 in the seniority list. There were 13 officers senior to him. There was nothing against them. At least, nothing was ever pointed out. Yet, they were overlooked. Why?

(49) It was urged by the counsel for the petitioner that the Chief Minister had ordered the appointment of respondent No.4 as Chief Secretary because he is related to him. Factually, the relationship was not denied. In fact, Mr. Sachar had very candidly admitted that Mr. Mann is related to Mr. Badal. However, even if the aspect of relationship is ignored, the fact remains that respondent No. 4 was appointed as Chief Secretary by superseding a large number of officers, It is also the admitted position that six officers had to be placed in the scale of pay meant for the post of Chief Secretary as there was no justifiable reason to supersede them. It may be legally permissible for the Chief Minister to do so or to appoint a person of his choice. However, the question still remains—Was it administratively proper and morally justifiable? Especially when the action involved an extra and avoidable financial burden on the State exchequer. Would a wholly undeserved supersession be not administratively undesirable or at least improper? More so, when the person happens to be a relative? The facts speak for themselves. The answer is not difficult to guess.

(50) Similarly, even respondent No. 5 was appointed as Principal Secretary despite the note pointing out that "two complaints of alleged favouritism and corruption" were pending against him. Why? Personal preference? Was it a *bonafide* exercise of power? If yes, why was the officer shifted to another post after a short while? The reasons are not difficult to imagine.

(51) Thirdly, on coming to know of the registration of the two cases by the CBI, respondent No. 4 had immediately declared at a press conference on 26th February, 1997 that "strict and harsh" disciplinary action shall be taken against the petitioner. In fact, a lot more was said. The counsel for the respondent did not claim that he had been wrongly quoted. Irrespective of that, the question still remains as to how did the fourth respondent make an announcement regarding action against a person who was senior to him. Was he the punishing authority ? No. Had he sounded the authorities at all the levels before making the public announcement? Or merely assumed the consent of everyone including the Chief Minister? In either event, it is indicative of a pre-determined mind moving for the kill.

(52) It appears to be absolutely clear that the respondents were greatly upset by the registration of the two cases. They had made up their mind to return the compliment. The fourth repondent had made a publiic announcement of what was, probably, a private decision till then.

(53) And then, the State power was used to rescind the two notifications. The record indicates that the announcement regarding recission was made even before (at least in one case) a proposal had been put up by the Principal Secretary, Vigilance. The papers produced by the counsel for the State of Punjab show that the file had been put up by the Principal Secretary (Vigilance) on 27th February, 1997. There was no decision for rescinding the notification on the day of the press conference viz. 26th February, 1997, when the Chief Secretary, Mr. R.S. Mann, had made the announcement. How did he do it? Nothing was pointed out from the record.

(54) Not only that *Vide* letter dated 5th March, 1997, various departments were asked to send "all relevant record to the allotment of land by the PUDA for construction of Cricket Stadium at Mohali, disbursement of funds by PUDA/State Government or any other relevant information which may be available....." to the Government. The departments were advised that" if any offical of the CBI approaches you for record or any examination of the concerned officials, he may kindly be advised to approach either the Department of Vigilance or the Department of General Administration." In other words, everybody was being advised to observe silence and plead ignorance. Why? Who had to be shielded? What was to be kept back ?

(55) Still further, the State Government had advised the CBI "to immediately stop investigation in the cases of Mr. Bikramjit Singh and transfer of land at Mohali by PUDA to PCA." More than that, a clear and unequivocal threat to use the State machinery to enforce its orders was conveyed to the Director, CBI. He was warned that the CBI should not "create any unpleasant situation for itself and the government of Punjab by insisting on further investigation". He was informed that "the Government has advised the concened parties not to part with any record to the CBI". The step was, to say the least, extraordinary and unprecedented.

(56) Thus, it is clear that a concerted effort was being made to stifle the investigation by the CBI. Why? If the respondents 4 and 5 were faultless, they had nothing to fear. Nor would they have been so annoyed, It appears that the respondents are merely talking of principles. In fact, they were acting on interest. The fact that the notifications issued by the repondents have been quashed by the High Court and the fact that the CBI was directed to continue with the investigations clearly shows that the action of the State government was not legal. Yet, it appears that the respondents are fully convinced that the petitioner is the cause of their problems. Thus, action has to be taken against him. The plea of Mr. Nehra that there is an inextricable link between the cases registered by the CBI and the charge sheet issued to the petitioner does not appear to be without merit.

(57) As noticed above the Principal Secretary (Vig.) had put up a proposal for the recission of the notifications regarding investigation by the CBI before the Chief Secretary. On 27th February, 1997 Mr. Mann had endorsed the proposal *inter-alia* with the observation that "the action of the then CS/CM clearly smacked of malice, vendetta and gross violation of established norms and procedure." Mr. Badal approved this note on the same day. Can it still be said that the State Government or the repondents have an open mind regarding the charges levelled against the petitioner? Is it not that a finding had already been recorded and that the formality of complying with the rules was being observed by the issue of a charge sheet on 24th April 1997? What is really left to be enquired into?

(58) Another fact, which deserves mention, is that while charge-sheeting the petitioner, he had been informed that "if for the purpose of preparing his statement, he wishes to have access to the relevant official record, he should inspect the same in the

Department of Vigilance on any working day after making prior appointment with....". The charge-sheet, as already noticed, was issued to him on 24th April 1997. He had been given 21 days' time to file his reply. However, merely three days later, on 27th April 1997, the Chief Minister himself had made a statement regarding the appointment of a High Court Judge as the Enquiry Officer. A copy of the press report has been produced as Annexure P.4 on the record. Why was this done even before the time for submission of the reply to the charge-sheet had expired? The Chief Minister had not even waited for the expiry of the time that had been granted to the petitioner to submit his reply to the charges levelled against him. What was the grave hurry? Why was the Chief Minister not even willing to wait for a few days before announcing the decision regarding the appointment of the Enquiry Officer? That too at a press conference? The petitioner has undoubtedly said that he has a great respect for the Chief Minister. That is indeed evidence of good training. Yet, the fact remains that the action of the Chief Minister does not satisfy the test of objectivity, which is so basic for the validity of every state action including an administrative order.

(59) Still further, it was not a mere accidental slip by the Chief Minister at an impromptu Press Conference. When the petitioner submitted requests for permission to inspect certain records *vide* his letters dated 30th April, 1997 and 2nd May,1997 (copies of which have been collectively placed on record as Annexures P.5 and P.6), the Stae Government sent a reply *vide* its letter dated 26th May, 1997. He was informed that "the file relating to the vigilance enquiry against Shri RS Mann, IAS and Ms. Tejinder Kaur relating to transfer of Housing Board funds from Nationalised Banks to AMRO Bank cannot be made available to you as it is nowhere relevant to the charge sheet...." With regard to the other files, it was not said that the record as asked for by the petitioner was not relevant. Yet, the reply was— "will be shown during the enquiry, if declared relevant by the Enquiry Officer."

(60) Thus, it is clear that a conscious decision had been taken by the Government to appoint the Enquiry Officer even before the expiry of the time, which had been granted to the petitioner for submission of his reply to the charge sheet. In fact, by this very letter, the petitioner had been informed that "the time for submitting the reply" had been extended till 16th June, 1997. Yet, the petitioner's request regarding permission to see certain files etc. was being postponed or left to be decided by the Enquiry Officer. Why ? Was the government abdicating its power and duty to consider the

petitioner's reply to the charge sheet? And that too so readily? There was no explanation during the hearing.

(61) It is fairly clear that the respondents had not even maintained a facade of objectivity. Whatever be his reply to the charges, howsoever good his explanation, the State Government was bent upon subjecting the petitioner to a departmental enquiry. Nobody was even willing to wait for much less than consider his reply. The true intention is too obvious.

(62) Normally, when an employee is charge-sheeted, he has a right to put-forth his reply to the allegations levelled against him. In order to give him an effective opportunity to submit the reply, the department makes the record available. Thereafter, the reply received from the employee is expected to be objectively considered. It is only when the reply is found to be unsatisfactory or the doubt in the mind of the employer with regard to the correctness of the stand taken by the employee persists that an order for the appointment of an enquiry officer is passed. Undeniably, the enquiry proceedings involve time, energy and expense. Even for the Government. The enquiry is not initiated or ordered unless there are justifiable reasons. However, in the present case, it is clear from the record that the order for the appointment of the enquiry officer had been passed immediately after the service of the charge sheet on the petitioner. Factually, the Government itself had given time to the petitioner to submit his reply 16th June, 1997. Still, the decision to appoint the enquiry officer had been announced on 27th April, 1997. The facts speak for themselves. These militate against the claim of fairness, objectivity and *bonafides* as made by the respondents.

(63) It also deserves mention that the decision to charge sheet the petitioner or to take disciplinary action against him was not based upon an objective consideration of facts or files by any impartial and independent person. In fact, respondent No.4 had actively participated in it despite the fact that an accusing finger was being pointed towards him in one of the two cases, which had been registered by the CBI. The suggestion on behalf of the petitioner that the charge sheet was not merely a counter blast but in fact an attempt to stifle the investigation by the CBI and to create a defence does not appear to be totally unfounded. In fact, there was a clear attempt by the State Government and its officers to stall the investigation by the CBI. But for the intervention of this court through a petition by way of Public Interest Litigation, they

might have even succeeded. The biased attitude of the respondents is fairly and clearly borne out from the letter of 26th May, 1997. In the memorandum dated 24th April, 1997 by which the charge sheet had been issued to the petitioner, he was informed that if he wished to "have access to the relevant official record, he should inspect the same in the Department of Vigilance after making prior appointment." This was for the purpose of enabling him to prepare his reply to the charge sheet. In the list of documents attached with the memorandum, the report of "fact finding enquiry conducted by S. Surjit Sigh, IAS, Principal Secretary, Vigilance including Annexures" was mentioned. It is the petitioner's case that Mr.Sidhu was a subordinate of respondent No.4 and that he was wanting to help him even in the case relating to the transfer of funds from a Nationalised Bank to the AMRO Bank wherein enquiry was being conducted against Shri R.S. Mann and Ms. Tejinder Kaur. It was suggested that a substantial amount of about 10 crores had been transferred. It was kept back from the petitioner on the ground that it was not relevant. The other files were not said to be irrelevant. Yet, these were withheld. It was said that these shall be "shown during enquiry, if declared relevant by the Enquiry Officer." To say the least, it was calculated to prevent the petitioner from submitting a proper and an effective reply.

(64) Even the events that have followed the action of the petitioner in forwarding the cases to the CBI and the investigation so far, do not seem to help, support or lend any credence to the claim of *bonafide* exercise of power as made on behalf of the respondents. In pursuance to an interim order passed by the Bench consisting of V.K. Jhanji and N.C. Khichi JJ., on 3rd August 1998 the CBI had filed the Status Reports with regard to the two cases registered by it. The reports in respect of both the cases were given to the Court. These were ordered to be kept in a sealed cover with Mr. S.N. Aggarwal, Jt. Registrar (Rules). During the course of hearing, counsel for the CBI, Mr. RK Handa had presented copies of status reports to the Bench on 16th October, 1998. In respect of RC No. 7/97, the report 'attested' by Mr. S.L. Gupta, DSP, CBI was filed. With regard to RC No. 8/97, a report 'attested' by the Investigating Officer, Mr. O.P. Sharma was filed. Certain annexures were also appended to these reports. Details with regard to the investigation done in the two cases were also furnished to the court.

(65) In respect of the case relating to Mr. Bikramjit Singh, the status report *inter alia* says as follows:—

"12 The investigation of this case has been conducted in different parts of Punjab, Chandigarh, Delhi, Bhopal, Bangalore and Mysore for unearthing the aforesaid assets and expenditure. Till date 169 witnesses have been examined and 485 documents have been collected from different quarters.

13 Investigation conducted so far has indicated that Sh. Bikramjit Singh and his family members had the following income, expenditure and assets during the check period (01.01.80 to 25.2.1997):—

(A)	INCOME	:	Rs. 046,30,911-21
(B)	EXPENDITURE	:	Rs. 077,26,996-25
(C)	ASSETS	:	Rs. 104,80,868-93
(D)	DISPROPORTIONATE AMOUNT (Expenditure+Assets—Income)"	:	Rs. 135,76,953-98

(66) With regard to the case regarding the transfer of land to the Punjab Cricket Association, various findings have been recorded. It has been observed as under:—

"49 The investigation so far conducted has disclosed that the Government land has been transferred by Shri I.S. Bindra, the Secretary, Sports to the Punjab Cricket Association, a private body without any authority. As per the Rules of the Business of the Government of Punjab, 1992 he was not competent to lease out the Government land to a private body of which he himself was the President/ Chairman. He misused his powers as the Head of the Department of Sports i.e. Secretary, Sports Department, Punjab. It has been further disclosed that the allotment did not have the approval of the Finance Committee which was the competent authority for making such allotments. Shri Bindra signed the one-sided lease deed on behalf of Sports Department of Punjab for which he was not authorised without the proper approval of the competent authority including the Finance Department.

50 The Deputy Controller of Accounts (Finance & Audit) of Punjab Urban Devlopment Authority, Chandigarh had obserbved in her note dated 25.08.95, reproduced below:—

> 'To have granted money for the construction of Cricket Stadium and Club House to a private institution is illegal and not sustainable under the PHDB Act, 1972. The Board could not authorise grant to a private institution like PCA. The grant of land to PCA free of cost which as per market rate was worth more than Rs. 27 crores is highly unjustified. The then Chief Minister was not properly advised for the release of funds to M/S Punjab Cricket Association. The action of the board has created total unwarranted situation in contravention to the purpose of the Act of the PHDB/PUDA. Grant to a private body cannot be allowed at all under the act'.

51 It has also been disclosed that the land use was changed by Shri R. S. Mann, the then Chairman of PHDB (now PUDA), Shri I.S. Bindra, the then Secretary, Sports, Smt. Tajinder Kaur, the then Chief Administrator and Housing Commissioner and Shri T.C. Gupta the then Director Sports at their own level and it was not the decision of the Government to change the land use of Cricket Stadium and for transfer the land to a private body, PCA. It has also been disclosed that the Government of Punjab as well as Punjab Urban Development Authority have no control over the management of Cricket Stadium and Club House. It is seen that it was an essential condition for the release of funds that an agreement would be drawn up between the PUDA and the PCA regarding the ownership, utilization and management of both the stadium and the club house. Such an agreement is absolutely necessary, if the interest of the Government which has incurred the major part of the expenditure is to be safeguarded.

52 Despite the passage of many years, a final agreement between the PUDA and the PCA is yet to be finalised.

53 Missing.

54 The legal validity of the lease deed for the land itself is also questionable as it appears that the officer signing on

behalf of the Government did not have the authority to do so.

55 This is more so significant as this lease deed is the basis on which the property in question has been mortgaged to a private commercial bank to whom the PCA owes about Rs. 3 crores.

56 The investigation of this case is progressing.

(67) Do the above findings not indicate that the government had a good reason to order a probe? Was the probity of the officers not required to be probed ? Can it be said that the petitioner had acted malafide in carrying out the directions given to him by the Chief Minister? Did the petitioner act illegally or even improperly so as to be accused of having committed some supposed act of impropriety or misconduct? Do the events following the action of the petitioner not prove his devotion to duty?

(68) Despite the findings recorded by the CBI so far, Mr. Sachar contended that the petitioner had erred in reporting the cases to the CBI. He submitted that the polling had to take place on 7th February, 1997. On 6th February, 1997, there was no grave urgency which may have compelled the petitioner to make a reference regarding the two cases. According to the counsel, the petitioner could have waited and allowed the new Government to take its own decision.

(69) Did the petitioner err in not ignoring the orders passed by the Chief Minister?

(70) It may be assumed that keeping in view the overall factual position, it may have been possible for the petitioner to adopt a go slow policy. He may have had the option to adopt dilatory tactics and, thus, help his colleagues. But, is a civil servant to be punished for not overlooking the public good? In view of the sequence of events as delineated above, it appears that the petitioner had only carried out the clear and positive directions given to him by the then Chief Minister. If he had, as was suggested by Mr. Sachar, daily-dallied in the matter, an accusing finger might have been pointed at him. He may have been accused of failure to carry out the order. He may have been even suspected of making an attempt to shield his colleagues. In fact, after consideration of the matter, we are happy to note that the impending change in the government had not deterred the petitioner from doing his duty. The fear of possible

Censure had not diverted him from his path. The fact that he had not bothered about what lay dimly at distance and carried out his duty entitles him to a pat and not the persecution that he has been facing since February 1997.

(71) It is undoubtedly correct that the employer has a right to look into the conduct of an employee whenever it entertains any suspicion. Even a regular enquiry can be ordered. In fact, an enquiry only helps to find the truth. Whenever an officer is under a cloud, the probe would only enable the authority to either remove the cloud or the officer. However, an essential precondition is that the action should be bonafide. Whenever the bonafides are suspect, the validity of the impugned action becomes doubtful. What do we find in the present case?

(72) The investigation that has been conducted so far, has shown that the suspicions of the Bhattal Government were not totally unfounded. In fact, the results indicate that *prima facie* there was justification for ordering the investigation. It also deserves notice that when the respondents rescinded the notifications regarding the sanction for investigation, the court held that their action was not legally tenable. It was also observed that the officers had stalled the proceedings. Added to all this is the fact that a decision to proceed against the petitioner and to impose a "harsh punishment" had been announced even before the charge sheet had been prepared. The decision to appoint the Enquiry Officer had not only been taken but also, revealed to the press well before the period for submission of reply to the charge-sheet had expired. The petitioner's request for inspection of documents to enable him to file an effective reply was rejected with the observation that the files "will be shown during enquiry, if declared relevant by the Enquiry Officer." All these facts completely belie the claim of bonafides as made by and on behalf of the respondents.

(73) Learned counsel for both sides had referred to various decisions. Mr. Nehra had referred to the decision of their Lordships of the Supreme Court in *Dr. Partap Singh* v. *State of Punjab* (1), and of a Bench of this Court in AIR 1992 SC 604. Similarly, Mr. Sachar also referred to certain observations in these decisions and

(1) A.I.R. 1964 S.C. 72

also to the decisions in --*E.P. Royappa* v. *State of Tamil Nadu and another* (2), *Jasbir Singh* v. *State of Punjab and others* (3), and *State of Haryana and others* v. *Ch. Bhajan Lal and others* (4).

(74) There is no quarrel with the propositions laid down in these decisions. State power should be used *bona fide. Mala fides* and unlawful objects would vitiate a decision. The court shall be slow to draw an inference of *mala fides*. It shall insist upon a high degree of proof. It shall not act on mere probabilities. In fact, it is well settled that every state action, administrative or quasi-judicial, has to be just and fair. It must be based on an objective consideration of the relevant facts. It should be free from bias and prejudice. It should not be tainted by an extraneous consideration or *mala fide*. No body should be a judge in his own cause. There should be no conflict between the interest and duty. Besides these, an equally well recognised principle is that the court shall not deny justice to a party only on account of technicalities. The court shall reach injustice wherever it occurs. The court shall never be a silent spectator when a party is being wronged by the State or its officers and instrumentalities.

(75) Judged by this criterion, we are satisfied that the State action was not *bona fide*. It was not free from bias and prejudice. The respondents were angry with the petitioner. He had not shelved the orders passed by the then Chief Minister. He had not pushed the matter under the carpet. The respondents had, thus, decided to award to him strict and harsh punishment. The charge-sheet was not issued in the *bona fide* exercise of State power. It was not calculated to serve public interest but to wreak private vengeance. It was designed to promote private interest of the officers who were under a cloud. A tooth for a tooth is an old attitude. However, in the present case it appears that the respondents are looking for gold in the petitioner's teeth. Not only revenge but even reward.

(76) The first question is, thus, answered against the respondents. It is held that the charge-sheet was not issued *bona fide*. It was calculated to be used as a hammer to swat a fly on the petitioner's forehead. He does not deserve this.

(2) A.I.R. 1974 S.C. 555.
(3) 1995 (3) S.C.T. 96.
(4) A.I.R. 1992 S.C. 604.

Reg: (II) DOES THE CHARGE-SHEET DISCLOSE SOME MISCONDUCT ?

WAS THE PETITIONER GIVEN A REASONABLE OPPORTUNITY ?

(77) The charges as levelled against the petitioner have been reproduced above. Mr. Nehra contended that the allegations do not reveal any misconduct which may require an investigation. Is it so ?

(78) A perusal of the Articles of charges as reproduced above shows that the first charge against the petitioner is that he had "acted in a *mala fide* manner and in gross violation of the established norms and procedures of Government functioning in utter disregard to the principle of objectivity, fair play, integrity and high morals expected from a senior civil servant" when he issued the two notifications under the Delhi Special Police Establishment Act, empowering the CBI to enquire into the allegations of disproportionate assets by respondent No. 5 and the allotment of land and funds to the Punjab Cricket Association. It is also alleged that he showed undue hurry and interest. Really ?

(79) Firstly, it is the admitted position that the petitioner had not acted *suo motu*. The extracts from the record as produced by the State of Punjab show that the Chief Minister had sent a note to the petitioner on 6th February, 1997. It was under her orders that the matter had been referred to the CBI by the petitioner. In one of the cases, the Chief Minister had directed the petitioner to do the needful "immediately". The sequence of events as noticed above shows that he had merely complied with the directions. Can he be still accused of having committed misconduct? How did he act in a *mala fide* manner? What were the established norms and procedures of Government functioning which were grossly violated or utterly disregarded by the petitioner? How were the principles of objectivity, fair play, integrity and high morals expected from a senior civil servant ignored by the petitioner? There is no answer on the record. Except suggesting that the petitioner should have waited for the new government to take over, nothing concrete was pointed out.

(80) In our view, obedience to the directions given by a superior and more particularly the head of the Government cannot amount to misconduct so as to justify the issue of a charge-sheet and the initiation of an enquiry. Still further, the events that have followed the reference to the CBI clearly belie the suggestion of

any *mala fides* on the part of the petitioner. More than this, the respondents have not even remotely suggested that they had any conflict with the petitioner at any stage. Thus, he had no bias against them. In this situation, it is clear that if the petitioner had remained silent after the facts had been seen, it would have been a matter for suspicion against him.

(81) The only contention on behalf of the respondents was that the petitioner should have waited for the new Government to take over. In other words, the suggestion was that the petitioner should have sat over the files. Does it not indicate that the respondents wanted an opportunity to put a cover on both the cases after assuming office? The observations made by the Division Bench while deciding CWP No. 5428 of 1997 clearly give such an indication. Hon'ble N. K. Sodhi, J has observed that the respondents "have interfered with the investigations of the two cases and succeeded in not allowing it to continue." Thus, directions to "hand over all the records that are required by the investigating agency" were given. It was also noticed with concern that the State Government had *vide* letter dated 6th March, 1997 asked the various departments "not to part with the records demanded by the Central Bureau of Investigation." The Hon'ble Judge has observed that "such a situation cannot be allowed to continue to prevail and in this *extra-ordinary* situation, the court cannot shirk its duty to issue necessary directions," The observations reveal that there was an effort by the respondents to shut everything behind an iron curtain. And yet, the petitioner is being accused of having acted *mala fide* or ignoring the principles of integrity and morality. Nothing could be more unfair.

(82) Similarly, on one hand it has been alleged that the petitioner had processed the cases with undue hurry and undue interest in that "most of the action was completed on 6th February, and on 7th February, which was a holiday". On the other hand the respondents accuse the petitioner of having antedated and fabricated the record in that "some of the actions/noting which is shown to have been done on 6th and 7th February was actually done on 8th February, 1997." Probably, to explain this contradiction, it has also been alleged that the "notifications and the letters addressed to the Director, CBI were issued and forwarded after 8th February, 1997 afternoon but you (the petitioner) predated these letters and notifications as if they had been sent on 7th February, 1997." However, mercifully, it has not been even suggested that the letters had been sent after the result of the election had been announced.

That being so, it is really of no consequence whether the letter was actually sent on 7th February or 8th February or even on 9th February, 1997. It is not the suggestion on behalf of the respondents that the petitioner had any personal malice or bias against any particular officer or any of the respondents. He had no personal end to serve. Or axe to grinde. Yet, he is being accused of antedating and fabricating the documents. For what purpose? To what end? With what motive? There is no answer. In this situation, the suggestion made on behalf of the petitioner that the sole purpose of the respondents in levelling these charges was only to create a defence for themselves and to impose a harsh punishment on him cannot be easily brushed aside.

(83) Even with regard to the remaining charges, different pleas were raised by the counsel for the petitioner. To illustrate, one of the charges against the petitioner is that he had recalled two files relating to the two cases from the office. So what? The petitioner was not an outsider. He was not a stranger. He could have legitimately thought that the files related to important cases involving senior officers and should not be left with the office. Similarly, it was alleged that the petitioner had not verified the assertions in his note of 6th February, 1997. However no error of fact was disclosed either in the charge-sheet or at the hearing. Still further, it was also alleged that the petitioner had violated the election code issued by the Election Commission of India and the instructions issued by the Government. According to the charge sheet, no "important cases were to be disposed of by the Secretaries without showing them to the new Ministers—". The respondents seem to believe that the petitioner had violated the code by referring the two cases to the CBI. How? Which important case did the petitioner decide? None. He had merely executed the directions given by the then Chief Minister. This did not violate the code, This was neither illegal nor improper. In any case, it constituted no misconduct.

(84) Faced with this situation, Mr. Sachar submitted that the petitioner had violated the provisions of Rule 48 of the Rules of Business of the Government of Punjab. What does the rule require? In a nutshell, it provides that whenever a department proposes to issue "a statutory rule, notification, order or.....the draft shall ordinarily be referred to the Department of Legal and Legislative affairs for opinion and revision where necessary," The suggestion was that the order regarding reference to the CBI had to be referred to the Law Department. Even if it is assumed that the order of

reference is statutory, we are unable to accept the submission. Firstly, on the language of the rule it appears that the provision is directory. Secondly, it confers a wide discretion on the authority. No reference is 'ordinarily' required unless it is considered 'necessary'. The Chief Minister or the petitioner could have taken the view that a reference was not necessary. Thus, we reject the submission.

(85) In view of the conclusion that we have recorded on the first question and also the observations made above, it does not appear to be necessary to examine each of the charges separately. Broadly, it appears that even if all the allegations made by the respondents are assumed to be correct, it would only indicate that two views were possible. The petitioner had taken one of the possible views. Mr. Sethi contends that the petitioner has property. That is not the charge against him.

(86) Mr. Sachar, however, pointed out that even the Advocate General had not been consulted. On behalf of the petitioner, it was stated that there is a letter from the then Advocate General which shows that the allegation is false. The letter was actually shown by the counsel.

(87) On a consideration of the charges, we are left with a feeling that there was a concerted move to fix the petitioner. He was accused of having kept the matter as a secret and of having proceeded to issue the notifications regarding sanction without conducting a proper preliminary enquiry. Surely, an officer of the rank of Chief Secretary, the senior most member of the service in the State and a person who is said to be at No. 2 in the All India seniority of the IAS officers, was entitled to keep certain files which he considered to be of a sensitive nature so as to deliver them personally to the authority/officer concerned. He was entitled to exercise his judgment and to take decisions. The initiation of departmental proceedings against him on such charges at the instance of persons who are themselves under a cloud, was not a *bonafide* exercise of power.

(88) Probably, to make a pretence of propriety, Mr. Mohinderjit Singh, counsel for respondent No. 5 contended that the petitioner had not disclosed to the Chief Minister the fact that

he had been exonerated of all the charges in December 1994. He produced a photo copy of page 18 from the file. It reads as under:—

> "Since the extension sought for has already been over, I presume the enquiry has been completed. Even if it has not been completed, I would like to know the stage of the enquiry. In my view, however, while making enquires of the assets, only such of the assets of the officers should be put to fresh enquiry which are over and above the assets declared by the officers from time to time in their property returns, otherwise it tantamounts to undue harassment, especially when the officers have declared the assets and the Government have noted the intimation as well as the property returns. Views in this regard may please be put up on separate file by the Chief Secretary on the file of the Department of personnel, after consulting the Law Department."

(89) Since the matter is pending investigation, we do not wish to make any comment. We would only say that the above note did not debar a further probe. In fact, the Chief Minister had asked the Chief Secretary to consult the law department and to then put up a note. The matter was only under consideration. The document does not embody a decision. We shall say no more.

(90) Still further, the sequence of events as noticed above shows that the petitioner was not allowed access to documents to enable him to file an effective reply to the charge sheet. The enquiry officer was appointed even before the time for the submission of reply to the charge-sheet had expired. More than that, it was even recorded by repondent Nos.3 and 4 that the petitioner's action "clearly smacked of malice, vendetta and gross violation of established norms and procedure". This shows the real intention.

(91) Another fact that desrves notice is regarding the grant of a reasonable opportunity to the petitioner. It was contended on behalf of the respondents that a detailed enquiry is being conducted and that the petitioner shall be afforded a full opportunity to prove facts. He is being given every opportunity to prove his claim regarding the *bona fide* exercise of power. Is it really so?

(92) We are a society governed by the rule of law. Not by the whim and caprice of anyone. No matter how high. Even a person accused of a heinous crime is entitled to a fair trial and a reasonable

opportunity to prove his innocence before an impartial authority or court.

(93) In the present case the petitioner was not provided the copies of the documents as asked for by him despite an assurance having been given in that behalf in the memorandum with the charge-sheet. Even his request for permission to inspect the documents was not accepted. He was informed that the documents shall be shown during the enquiry, if declared relevant by the enquiry officer. This was wholly unreasonable. It was violative of the principles of Natural Justice. Without the copies of documents which even the respondents did not suggest were irrelevant, it would have been almost impossible for the petitioner to effectively exercise his right to submit a reply to the charge-sheet. The rule in this behalf has been clearly enunciated in *State of U.P.* v. *Shatrughan Lal and another* (5). Their lordships were pleased to hold that :—

> "Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where a charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time called upon to submit his reply, it cannot be said that an effective opportunity was provided to him. [See : JT 1987 (4) SC 398; AIR 1986 SC 2118 ; AIR 1982 SC 937)]".

(94) The above observations clearly show that the action of the respondents was violative of the principles of natural justice. In fact, by virtue of his rank and seniority, the petitioner was entitled to be shown some courtesy. He should have been given copies of the documents. Even if that were too much, he was entitled to see and inspect the documents. The respondents were in error in denying his request. Yet, it is claimed that the petitioner shall have full opportunity to defend himself. The plea is only a pretence. It is only an attempt to defeat the petition.

(95) It was also submitted on behalf of the petitioner that even the Enquiry Officer was not allowing a reasonable opportunity.

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It was even asserted that the proceedings were being held in camera. Why? Only dark deeds need the cover of darkness. Otherwise, sunlight is the best antiseptic. In the peculiar circumstances of this case, we shall say no more.

(96) Resultantly, we answer even the second question against the respondents. It is held that the charge-sheet, in the circimstances of this case, is only a divice to harass the petitioner. It does not disclose any misconduct on the part of the petitioner which may warrant an enquiry. Still further, there was denial of a reasonable opportunity to the petitioner. The respondents had wrongly failed to give copies of the documents which had been asked for by the petitioner.

(97) In view of the answers to the above-noted two issues, it does not appear to be necessary to examine the other questions as noticed above. However, we shall advert to these issues very briefly.

Reg : (iii) DID THE STATE GOVERNMENT HAVE NO JURISDICTION ?

(98) Mr. Nehra contended that the State Government has no jurisdiction to initiate departmental proceedings against a member of the IAS.

(99) We are unable to accept this contention. The Members of the Service are governed by the provisions of the All India Services (Discipline and Appeal) Rules, 1969. The provisions of the Rules were amended in 1974. By virtue of this amendment the State Governments were empowered to enquire into the conduct of the officers allocated to the respective States. In view of this provision, the contention raised by the learned counsel cannot be accepted.

Reg : (iv) WAS THE TRIBUNAL'S APPROACH ERRONEOUS?

(100) In view of our conclusions on the first two questions, a detailed examination is not called for. The order of the Tribunal cannot be sustained. The contention raised on behalf of the petitioner has, thus, to be accepted.

Reg : (v) CAN THE HIGH COURT INTERFERE?

(101) It is undoubtedly the right of the Government to enquire into the conduct of its officers. However, it is equally clear to us that all power has to be exercised *bonafide*. To promote public

interest, Fairly, Judiciouly. Not to promote private or personal interest. Still further we also feel that the writ court has the power and duty to reach injustice wherever it occurs. Silence is not always the right option. In any case, it would not be right to remain silent when the things are ill done.

(102) In the present case we are satisfied that failure to intervene would lead to failure of justice. We, therefore, feel constrained to interrupt the proceedings at this stage. In our opinion, the proceedings against the petitioner had not been initiated *bonafide*. The continuance of the proceedings shall not promote public but only private interest. If at all, it might deter other members of the service from taking decisions. This shall not be right.

The Conclusion :

(103) In view of the foregoing our conclusions are as under:—

(i) Duty is like debt. It must be discharged without delay or demur. The petitioner had done so. The impending change in Government had not deterred him from doing his duty. Even the fear of a possible censure had not diverted him form the righteous path. He had not bothered about what lay dimly at distance. He had dealt with what was clearly at hand. For this, the petitioner deserved a pat and not persecution. We are satisfied that the action of the respondents in issuing the impugned charge-sheet against the petitioner is like using a hammer to swat a fly on his forehead.

(ii) Man cannot choose his birthplace. Nor his parents. Nor his role. These are purely divine prerogatives. However, playing the assigned role well is within man's reach. Having done it he should be entitled to sit back with satisfaction. In the present case, we are satisfied that the petitioner had merely carried out the orders given to him by the then Chief Minister faithfully and promptly. He had not acted *malafide*. There was no vendetta. There was no violation of the prescribed norms or procedure. The petitioner had committed no default so as to deserve any damage to his career or reputation.

(iii) The respondents seem to have an eagle's eye to see faults in others. They need to have a look at themselves before pointing an accusing finger at the petitioner. Had they

been faultless, they would not have been so annoyed with him.

(iv) The respondents are merely talking of principles. In fact, they are acting on interest. The charge-sheet was not issued to the petitioner in the *bona fide* exercise of power. It was calculated to create a defence. A tooth for a tooth is an old rule. In the present case the respondents are looking for gold in the petitioner's teeth.

(v) The sequence of events shows that the respondents had made up their mind to hold the petitioner guilty of the allegations levelled against him. They had decided to impose a harsh punishment even before a charge-sheet had been issued. This decision had been announced by Mr. R.S. Mann, the Chief Secretary on 26th February, 1997 at the press conference. The next day, on 27th February, 1997 respondent No. 4 had observed in his note that the petitioner's action "smacked of malice, vendetta and gross violation of established norms and procedures". This had been very promptly approved on the same day by the Chief Minister Mr. Parkash Singh Badal. Little was left to be looked into. The proceedings had neither been initiated *bona fide* nor carried on fairly.

(vi) The respondents have not followed the basic rules and norms for a just and fair enquiry. They have violated the minimum guarantee that the officer shall be given an effective opportunity to submit a reply to the charge-sheet and that his reply shall be objectively considered before a decision to hold a regular enquiry is taken. In the present case respondent No. 4 had announced that strict and harsh action shall be taken against the petitioner. The Chief Minister had made an announcement regarding the decision to appoint an enquiry officer even before the period for the submission of the reply as granted to the petitioner had expired.

(vii) The procedure of "incamera" proceedings as adopted by the enquiry officer was wholly unfair. What was there to hide? Only dark deeds need the cover of darkness. Otherwise, sunlight is the best anti-septic.

Transparency is the best safe-guard against all allegations.

(viii) A writ court does not normally intervene to stall an enquiry or to even quash a charge-sheet. However, in the present case we are satisfied that silence shall not be the right option. When things are ill done, silence is a sin. The present case falls in the category of the rarest of the rare cases where the court should intervene to prevent infliction of injustice.

(ix) The petitioner's contention that the State Government had no power to initiate disciplinary proceedings against a member of the Indian Administrative Service is not tenable under the rules and is, consequently, rejected.

(x) There was a denial of reasonable opportunity to the petitioner, as he was not given copies of the documents or permission to inspect the record. The action was violative of the principles of natural justice.

(104) In view of the above, we allow the writ petition. It is held that the Central Administrative Tribunal had erred in rejecting the petitioner's claim. Resultantly, the order dated 16th April, 1998 passed by the Tribunal, a copy of which is on record as Annexure P-8 is set aside. We also quash the charge-sheet dated 24th April, 1997, a copy of which is on record as Annexure P-4. The Civil Misc. Petitions shall stand disposed of in terms of this order. The petitioner shall be entitled to his costs.

(105) During the course of hearing, Mr. R.K. Handa, counsel for the Central Bureau of Investigation, had handed over to the Court Status Reports in R.C. No. 7/97 and RC No. 6/97. These were duly attested by the officers of the CBI. These two reports are contained in a reddish file cover. Mr. Handa had also handed over the details of investigation in the two cases. These details unlike the Status Reports had been furnished in duplicate. Both these are contained in two separate brown files. The above three files have been put in a cover. It has been sealed with the seal of the Registrar of this Court. (Mark 'A')

(106) Mr. Rajinder Sachar, counsel for the State of Punjab had initially furnished to the court certain copies of documents (extracts from notings etc.) during the course of hearing. Ultimately, he had filed a compilation (pages 1 to 94). These were

the extracts of the notings and press cuttings etc. The files are furnished by the counsel along with those furnished by the other counsel are placed together in a second envelope which has also been sealed. (Mark 'B')

(107) These sealed envelops shall not be opened by any one in the Registry without the permission of the Court. The sealed envelops have been initialled by us.

S.C.K.

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