ALL INDIA INSTITUTE OF MEDICAL SCIENCES

February 13, 2016

PRESS STATEMENT

AIIMS STATEMENT ON THE JUDGMENT OF THE PRINCIPAL BENCH OF CENTRAL ADMINISTRATIVE TRIBUNAL IN OA NO 2175/2015 SHRI SANJIV CHATURVEDI VS AIIMS DATED 3/2/2016

AIIMS has received a copy of the judgment of the Principal Bench of Central Administrative Tribunal Delhi in OA no: 2175/2015, Shri Sanjiv Chaturvedi vs AIIMS dated 3/2/2016.

AIIMS is examining the contents of the decision for implementation.

……

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2175/2015

Reserved on: 26.11.2015
Pronounced on: 03.02.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Mr. Sanjiv Chaturvedi, IFS
S/o Shri D.S. Chaturvedi,
Resident of House No. D-II 8,
Gate No.5, Western Campus,
Ansari Nagar, New Delhi-110029. ...Applicant.

(By Advocate: Shri P.K.Sharma)

Versus

Union of India through

1. The Secretary,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan, New Delhi.

2. President,
All India Institute of Medical Sciences (AIIMS)
Ansari Nagar, New Delhi-110029.

3. Director,
All India Institute of Medical Sciences (AIIMS)
Ansari Nagar, New Delhi-110029. ...Respondents.

(By Advocate: Shri Deepak Bhardwaj R-1 &
Shri R.K. Gupta for R-2 & R-3)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA, an officer of 2002 Batch of the Indian Forest Service (IFS, in short), was posted on deputation with the All

India Institute of Medical Sciences (AIIMS, in short) as its Deputy Secretary and Chief Vigilance Officer (CVO, in short) from 07.07.2012 to 14.08.2014. He is before this Tribunal assailing the action of the respondents in having issued to him the impugned Memorandum dated 29.05.2015, regarding his pending Annual Performance Appraisal Report (APAR, in short) for the period from 16.07.2014 to 16.12.2014, stating as follows:

"ALL INDIA INSTITUTE OF MEDICAL SCIENCES
ESTABLISHMENT SECTION (OD)

No.F.2-1/2014-15/APAR/Estt.I Dated:29 May 2015

Memorandum

Sub: Shri Sanjiv Chaturvedi, Dy. Secretary, AIIMS– Regarding pending APAR for 16.07.2014 to 16.12.2014:

****

With reference to his note dated 26.05.2015 on the subject noted above, the undersigned is directed to inform
That as per provisions, performance of one Govt. Employee is recorded once in a year for a particular financial year commencing from 1st April of year to 31st March of next year.

Following examination of the issues, it has been decided by Competent authority that your request for a No-Report Certificate for the period 17.12.2014 to 31.03.2015 is not justified and accordingly, a blank APR Proforma duly filled Part-I has since been provided to you to record your self appraisal to process it further.

Soon after it is received, the matter would be processed accordingly.

(Renu Bhardwaj)
(ADMN.OFFICER(DO)"

2. The applicant has also laid a challenge to another letter issued to him on 28.05.2015, in which the respondents had informed him as follows:

"ALL INDIA INSTITUE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi-110049

F.No.F.2-1/2014-15(APAR) Dated:-28 May 2015

To,

Shri Sanjeev Chaturvedi,
Deputy Secretary, AIIMS.

Subject: SUBMISSION OF APAR REPORT FOR PERIOD 1.4.2014 TO 31.3.2015

(Ref. Your Reminder Letter Dated 26.5.2015)

Sir,

With reference to your letter dated 26.05.2015 on the subject noted above, the undersigned is to inform that their observed ambiguities in the manner and style of processing the APAR for the period 01.04.2014 to 31.03.2015, you initiated at your own, that are as under :-

1.As per general guidelines, Section 1 of the APAR proforma is required to filled up by the Administrative Division/Personnel Deptt., while in the APARs you submitted, the same you have filled and processed at your own.

2. While observing the APAR you submitted for 01.04.2014 to 15.07.2014, it has been noticed that the Section that is needed to be filled up by Reporting Officer is not in original but photocopy. Moreover as per practice adopted in the past in your case, Director is the Reporting Officer, President, AIIMS is the Accepting Authority and Cadre maintaining authority is the Accepting Authority.

3. Your plea to provide you certificate certifying period w.e.f. 17.12.2014 to 3.03.2015 is also not justified, keeping in view the stated rule 5(6) that state, *"Where the Reporting Authority, the Reviewing Authority and the Accepting Authority have not seen the performance of a member of the Service for at least three months or 90 days during the period for which the report is to be written, the Government shall make an entry to that effect in the performance appraisal report for any such period".* Thus, it implies in case all the three authorities have not seen one's performance the no report period is suggestible while in your case the Reporting Officer (*the Director, AIIMS)* is available, and you just took leaves for 28 days.

To overcome these shortfalls, the competent authority has desired to endorse you a blank APAR proforma devised specifically by the Institute for recording APAR of Officers of level of IAS and equivalent cadres duly filled officially Section I for the period 01.04.2014 to 31.03.2015.

It is further to clarify that in terms of Rule 6(3) of Schedule 3, as Shri J.P. Nadda, has taken over the charge of President on 09.11.2014 and

thus is competent to review your APAR for the period 01.04.2014 to 31.03.2015, as Shri Nadda has observed your performance for more than 90 days.

You are accordingly requested to fill the enclosed self appraisal part of APAR for period 01.04.2014 to 31.03.2015 to enable to process the same within the terms of rules.

Your last letter on the subject dated 26.05.2015, thus stands disposed off.

This issue with the approval of Competent Authority.

Yours faithfully,

Encl:- As above

(Lalit Oron)
Administrative Officer (DO)

Copy to:

JS (IFS), Min. Of Environment & Forest
Parayavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.

PS TO DIRECTOR/ DDA"

3. This impugned Memorandum, and the impugned letter, as above, had been issued to him by the respondent-authorities in response to his own note dated 26.05.2015 (Page 173 of the Paper Book of the OA), through which, he had requested them for the period from 17.12.2014 to 31.03.2015 to be declared as a "no record period", by issuing a certificate to that effect.

4. The applicant has prayed that the impugned Memorandum dated 29.05.2015, and the letter dated 28.05.2015, may be quashed. In the result, the applicant had prayed for the following reliefs, and interim relief:

"Relief

a. Quash the impugned orders dated 29.05.2015 and 28.05.2015 (Annexure P-1) (Colly) passed by the respondent-Institute in blatant violation of Rule 5(2), 5(3) and 5(6) of All India Services (Performance Appraisal Report) Rules, 2007 and disregarding the finality attained in respect of APAR for the period 01.04.2014 to 15.07.2014 as per above mentioned APAR Rules;

b. direct the Respondent No.3 to complete entries into APAR, for the period from 16.07.2014 to 16.12.2014 forwarded to him by Shri K.C. Samaria, the then DD(A), AIIMS and forward it to Dr. Harsh Vardhan the then President, AIIMS for completion as President, AIIMS, as per Rule 5(2) and 5(3) of All India Services (Performance Appraisal Report) Rules, 2007

c. direct the Respondent No.1 to issue a certificate/make an entry to that effect in the APAR of the Applicant for the period from 16.12.2014 to 31.03.2015 in view of the performance of the Applicant not being seen for 90 days by Reporting Authority, Reviewing Authority and Accepting Authority for that period, as per Rule 5(6) of All India Services (Performance Appraisal Report) Rules, 2007.

d. allow the application with costs.

e. pass any other order deemed fit under the facts and circumstances of the case.

Interim relief:

Restrain the Respondents from re-writing the APAR of the Applicant for the period from 01.04.2014 to 15.07.2014, which has already been attained finality and disclosed to the Applicant as per relevant APAR Rules, and notification dated 31.03.2008 and for which the present incumbents have no locus at all to make any entries."

5. Because an "Urgent Application" was filed along with the OA on 15.06.2015, the case was ordered to be listed before the Vacation Bench next day, and the interim relief, as prayed for by the applicant, had been considered and granted to him by the Vacation Bench of this Tribunal, vide order dated 16.06.2015, as follows:

> "The learned counsel for applicant submits that duly completed APAR of the applicant for the period from 1.4.2014 to 15.07.2015 was communicated to the Cadre Controlling Authority on 09.02.2015 and now vide the impugned order dated 28.05.2015, the applicant has been asked to submit a fresh APAR proforma for the entire year 2014-15 to be filled up by the Reporting and Reviewing Authorities, as a new Reviewing Authority has taken over charge on 09.11.2014. According to the learned counsel for applicant APAR for the period from 01.04.2014 to 15.07.2014 has already attained finality and it cannot be reopened.
>
> Issue notice to the respondents returnable within two weeks. **In the meantime, respondents are directed not to proceed with writing fresh APAR for the period 01.04.2014 - 15.07.2014.**
>
> List again on 30.06.2015. **Dasti."**
>
> (Emphasis supplied).

6. After completion of the pleadings, the case came to be heard and reserved for orders on 29.10.2015. Thereafter, before the dictation of the order could be taken up, the learned counsel for the applicant mentioned his case in the open Court, and prayed for being allowed to make some more submissions, and prayed for the matter to be listed "For Being Spoken to". His request was accepted, and the matter was listed under the heading "For Being Spoken to on 26.11.2015, and the case was once again heard with regard to the written submissions filed by the applicant on 02.11.2015, after the case had earlier been heard and reserved for orders on 29.10.2015, and the copy of the relevant rules filed that day were also taken on record, and the case was then again reserved for orders on 26.11.2015.

7. Though the Paper Book and the file of the case is very bulky, with a very lengthy OA filed on 15.06.2015, and equally lengthy rejoinder filed by the applicant on 01.09.2015, but the facts of the case actually lie in a very narrow compass. The applicant belongs to 2002 Batch of the IFS (Haryana Cadre), at the time of filing of the OA, and was posted as Deputy Secretary, AIIMS, New Delhi, under the Central Staffing Scheme of Department of Personnel & Training (DoP&T, in short), and, perhaps, continues to be posted there now also.

8. The post of Deputy Secretary, AIIMS, had been created in the year 2011. Through its letter dated 23.06.2011, the Ministry of Health & Family Welfare, Government of India, the controlling Ministry for AIIMS, New Delhi, had sought a panel of suitable officers for posting against the said post through Annexure A-3. Earlier, prior to the aforesaid letter dated 23.06.2011 (Annexure A-3), when a proposal for creation of a new post of CVO in AIIMS was placed as an agenda item before the Standing Finance Committee of the AIIMS, in terms of 6(2)(c) of AIIMS Rules, 1958, in its meeting held on 20.07.2010, it was decided that a full time CVO was not needed in AIIMS, and that the officer joining at the newly created post of Deputy Secretary/Director rank would be assigned the work of CVO. These recommendations of the Standing Finance

Committee of AIIMS were approved in 144th meeting of the AIIMS Governing Body held on 27.11.2010, and also by the 144th meeting of the Institute Body of AIIMS at its meeting held on 16.01.2012 (Minutes issued vide Memorandum dated 17.02.2012 at Annexure A-4).

9. The applicant has also submitted that a letter dated 20.09.2012 had been addressed by the then Chairman of the Standing Parliamentary Committee Shri Brajesh Pathak to Shri Ghulam Nabi Azad, the then Minister of Health & Family Welfare, at Annexure A-5 (pages 87 to 88 of the OA), pointing out to the Hon'ble Minister about the commitment given by him on 08.06.2012 to the Standing Parliamentary Committee, without explaining as to the source from which he could obtain this privileged communication, since no copy of that was marked to him, though it included his name therein.

10. However, it is evidenced from Annexure A-6 Memorandum dated 07.07.2012 that when the applicant had joined as Deputy Secretary, AIIMS, it was ordered that he shall act as the CVO in AIIMS, apart from the other minor duties and responsibilities assigned to him through that Memorandum.

11. From Para 4.4 of the OA, and Annexure A-7, which is again an internal correspondence of the Government of India, issued from the DoP&T to the Ministry of Health & Family Welfare, and about which the applicant has not even made an effort to explain as to how the same came to be in his possession, it appears that soon after his joining at AIIMS, on 21.08.2012 a proposal was mooted by the Ministry of Health & Family Welfare to the Civil Services Board (CSB in short) to shift the applicant laterally from his then posting as Deputy Secretary, AIIMS, to the Department of AYUSH, which was considered by the CSB in its meeting held on 12.09.2012, and reasons and justification for having mooted the proposal were sought by the DOP&T from the Ministry of Health & Family Welfare through Annexure A7 dated 18.09.2012. However, the applicant has himself produced another Annexure A-8 dated 07.01.2013, again without explaining as to how he came to be in possession of that internal correspondence between the Secretary, Department of Health & Family Welfare and Shri Brijesh Pathak, Chairman, Department-related Parliamentary Standing Committee on Health and Family Welfare to state that through that letter the proposal for shifting of applicant laterally had been dropped, and he was continued as Deputy Secretary and CVO in AIIMS.

12. Once again, without having even tried to explain as to how he could have access to a copy of the said communication, which

appears to be in the nature of privileged communication, and is also marked as "Confidential" on top, the applicant has produced at Annexure A-9, a copy of a communication from the Political Section of the Prime Minister's Office, addressed to the Cabinet Secretary, regarding the latter's query dated 20.11.2012.

13. It seems that the Respondent-AIIMS, had, in the meanwhile, sought certain clarifications from the Central Vigilance Commission (CVC, in short) through their letter dated 07.09.2012 regarding participation of the applicant in various items of work he was expected to perform regarding tenders/procurement as he was holding the post of Dy. Secretary in addition to the charge of CVO. Through Annexure A-10 dated 04.10.2012, the CVC advised the Dy. Director (Admn.) AIIMS, to follow the relevant provisions of the Vigilance Manual, and not to associate the applicant-CVO in any decision making process relating to tenders/procurement, and the Rule position regarding the functioning of the CVOs was enclosed thereto, and a copy of this communication was marked to the applicant, and, therefore, the applicant is in authorized possession of this particular document. After that, apparently, the instructions of the CVC were followed, and all the proposals sent by the applicant in his capacity of CVO, AIIMS, till 14.08.2014, till his charge was changed, were acted upon by the CVC, and thereafter

he was no longer In-charge of the work of CVO, and reverted to his original substantive post of Dy. Secretary, AIIMS.

14. The applicant has alleged that this was done on the complaint of a particular Member of Parliament, addressed to the Minister for DoP&T through Annexure A-11 dated 08.5.2013, though the applicant has not explained as to how when a copy of this letter was not marked to him by the concerned Member of Parliament, he came to be in possession of this communication from a Member of Parliament to a Minister. He has also enclosed as Annexures to his O.A. copies of the letters dated 02.09.2013 & 28.01.2014 addressed by the same Member of Parliament to the then Union Minister for Health & Family Welfare. The applicant has, once again, not explained as to how and in what manner he came to be in possession of these privileged communications, copies of which were not marked to him either by the sender M.P., or the recipient Minister.

15. Once there was a change in the Government at the Union of India level in May, 2014, the same Member of Parliament once again sent another letter dated 24.06.2014 addressed to the then Union Minister for Health & Family Welfare, which also the applicant has produced at pages 106 to 108, as part of Annexure A-11/Colly, again without explaining as to how he came to be in

possession of this privileged communication. However, the applicant has alleged that the respondents acted on these complaints of the M.P., because of which only, through Office Memorandum dated 14.08.2014 (Annexure A-12), the charge of CVO, AIIMS, New Delhi, was taken away from him, and assigned to the Joint Secretary and CVO of the Ministry of Health & Family Welfare. A copy of this communication was marked to Director, AIIMS, and would have perhaps come to the notice of the applicant in his the then official capacity as CVO, but he has produced a copy of the same also without obtaining it officially, as provided for u/s 78 of the Indian Evidence Act, 1872, under which a public document cannot be used and relied upon unless certified by the Head of Department, who is the legal keeper of the record concerned.

16. At Annexures A-13 and A-14, the applicant has produced typed copy of some file notings, which purport to be a typed copy of the Note Sheet of the File No. V-16020/36/2009-ME-I, but the applicant has once again not explained as to how he came to be in possession of these File Notings, and he had certainly not applied for copies of this u/s 78 of the Indian Evidence Act-I of 1872, or under the Right to Information Act, 2005. Still, in Para-4.6 of his OA, the applicant has heavily relied upon the contents of both these Annexures A-13 & A-14 File Notings.

17. In Para-4.7 to 4.9 of his OA, the applicant has tried to make out a case that he himself was a paragon of all virtues, and the epitome of honesty and integrity, because of which only he could initiate action as CVO in many cases of corruption, which were skeltons in the cupboards of AIIMS. In Para 4.10 of his O.A., the applicant has further reiterated his contentions regarding his having exposed irregularities in the Respondent-AIIMS Organization, and has submitted that only in order to protect the corrupt elements, the Respondent Ministry and Institute never allocated to him the work of monitoring of infrastructure projects. He has not explained as to how, while being in the post of CVO of the Organization, he could also have been assigned such work, in the face of the clearcut instructions and directions of the Office of the CVC dated 04.10.2012, Annexure A-10, in which, quoting the Vigilance Manual, the CVC had directed AIIMS not to associate the CVO in any decision making processes relating to tenders/procurement.

18. However, soon after 14.08.2014, when the applicant was ordered to be relieved of his duties of CVO, through Annexure A-12 of that date, apparently some top level consultation had taken place between the Prime Minister of India and Union Minister of Health and Family Welfare, in response to which the Secretary,

Department of Health and Family Welfare, sent a Note to the Principal Secretary to Prime Minister, dated 23.08.2014, through Annexure A-15, which also falls in the nature of a privileged communication, and a copy of which was not marked to the applicant, but still he has produced a copy of the covering letter and the enclosed Note also, although he was never an authorized recipient of that Note, which was sent by the Ministry of Health and Family Welfare for the information of the Prime Minister and the Prime Minister's Office.

19. However, the applicant was upset, and he first filed a Writ Petition before the Delhi High Court in CWP No. 1815/2015, and later moved another OA No. 1887/2015 before this Tribunal, in which notices were issued on 25.05.2015. The respondents had filed an affidavit before the Delhi High Court in CWP No. 1815/2015, which the applicant has produced as part of Para 4.10 of his OA. But we are not concerned with most of these pleadings in the O.A., and the Annexures.

20. The present case of the applicant is related only to his Annual Performance Appraisal Report (APAR, in short), as per the prayers for reliefs sought in Para-8 (a,b & c) of the OA, which we have already reproduced above. The applicant has tried to make out his

case regarding the reliefs as sought for in this OA only in Paragraphs 4.11 till 4.18 of his OA.

21. He has submitted that under the All India Services Performance Appraisal Report Rules, 2007 (AIS APAR Rules, in short), he had submitted his APAR form, along with the Self Appraisal in the necessary proforma, for the year 2012-13 on 10.04.2013. The then Director, as his Reporting Authority, had filled the entries, and the then President, AIIMS, the then Minister for Health and Family Welfare had also recorded his favourable comments. The completed APAR was disclosed to the applicant on 14.12.2013, and thereafter sent to the Cadre Controlling Authority of the applicant, who also conveyed the same to him on 21.04.2014 through Annexures A-16 & A-17.

22. For the next financial year 2013-14, the applicant had submitted his APAR Form along with duly completed Self Appraisal on 09.04.2014. Somehow, even while his C.R. as Dy. Secretary and CVO of AIIMS had been written in the year 2012-13 properly by the then Director of AIIMS as his Reporting Officer, this time the applicant submitted his APAR Form to the Dy. Director (Admn.), Shri R.S. Shukla, who took it upon himself to fill up and complete the Appraisal Section-III of applicant's ACR on 03.05.2014, with the

Director of AIIMS, who was his Reporting Authority for 2012-13, becoming the Reviewing Authority under Section-IV for 2013-14.

23. In the applicant's APAR for 2012-13, the Review Column was blank, and it had been directly submitted to the Accepting Authority, the then Hon'ble Minister. This time, after the Director had signed as the Reviewing Authority, the same Minister signed as the Accepting Authority of the APAR of the applicant, on 16.05.2014, in Section-V of the APAR format. This APAR was also communicated to the applicant through Annexure A-19 (page-146 of the OA), and there was no occasion for him to protest because of the high overall grading assigned to him by the Deputy Director as his supposed Reporting Authority, and thereafter, it had been finally forwarded to his Cadre Controlling Authority by the Respondent-AIIMS on 01.07.2014.

24. In Para 4.11 of his OA, the applicant has mentioned the then Director, AIIMS, Shri R.C. Deka, as his Reporting Authority for the year 2012-13, and, *uno flatu,* stating contradictory thing, in Para 4.12 of his O.A. he has mentioned the Dy. Director (Admn.), Shri R.S. Shukla, as his Reporting Authority, for the year 2013-14, which is totally inconsistent.

25. However, the controversy in this case mainly relates to the APAR for the year 2014-15 only. In Para 4.13 of the OA, the applicant has submitted that for the year 2014-15, there were three Reporting Authorities for him, namely Shri R.S. Shukla as Dy. Director (Admn.) for the period from 01.04.2014 to 15.07.2014, Shri K.C. Samaria as the Dy. Director (Admn.) for the period from 16.07.2014 to 16.12.2014, and Shri V. Sriniwas, Dy. Director (Admn.) for the period from 17.12.2014 to 31.03.2015. This the applicant has claimed to have submitted on the strength of Rule 5(2) AIS (PAR) Rules, 2007, which states as follows:-

> "...a performance Appraisal Report shall also be written **when either the reporting or reviewing authority the member of the service reported upon relinquishes charge of the post, and in such a case, it shall be written at the time of the relinquishment or ordinarily within one month of such relinquishment".**
>
> (Emphasis supplied)

26. He has also submitted that Rule 5(3) of the same Rules further states as follows:-

> "**Where more than one performance appraisal reports are written on a member of the service during the course of the financial year each such report shall indicate the period to which it pertains...."**
>
> (Emphasis supplied)

27. Accepting that it is mandatory for more than one APAR to be written when there is more than one Reporting Authority in any

financial year as per the concerned Rules, the applicant has submitted that he had submitted his Self Appraisal along with duly filled APAR proforma to Shri R.S. Shukla, the then Dy. Director (Admn.), for the broken period from 01.04.2014 to 15.07.2014, who, after recording his entries, forwarded it to the Director, AIIMS, as the Reviewing Authority, and since, for the said period, the performance of the applicant had not been seen by any one President, AIIMS, and the Union Minister for Health for 90 days, because of the change of regime in Union of India in May, 2014, accordingly, after the entry of the Director as the Reviewing Authority, his APAR for that broken period became final. The Respondent-Institute sent the concerned broken period APAR to the Cadre Controlling Authority of the applicant on 09.02.2015, which, in turn, communicated the same to the applicant on 21.04.2015, through which, the applicant has claimed, the process for writing of the APAR for the said broken period (01.04.2014 to 15.07.2014) attained finality. To buttress these submissions, the applicant has not produced any documents or Annexures along with the present OA, but has stated that they are already annexed as Annexure P-2 (Colly).

28. Through Para 4.14, the applicant has submitted that for the period from 16.07.2014 to 16.12.2014, he had submitted his Self

Appraisal in the duly filled APAR proforma on 17.12.2014 to Shri K.C. Samaria, the then Dy. Director (Admn.) of AIIMS during that broken period, who, after completing the entries as the Reporting Officer, forwarded it on 31.03.2015, to Respondent No.3, Director AIIMS, as the Reviewing Authority. The applicant has further submitted that as per the DoP&T Notification dated 31.03.2008, the time frame for the Reviewing Authority to record its remarks is one month, which time frame has to be strictly followed by the Reviewing Authority. It was submitted by him that in this regard many reminders were sent by him to the Reviewing Authority, Respondent No.3, Director, AIIMS but he was still sitting over the APAR for the said period, apparently till the date of filing of the present OA on 15.06.2015.

29. The applicant has further submitted in Para 4.14 that it is on record that during this relevant broken period from 16.07.2014 to 16.12.2014, even though he was no longer the CVO of the Respondent-Institute AIIMS, he had sent four new cases to the CBI and CVC, in addition to getting the Store Officer of the Trauma Centre of the Institute suspended for issuing fake propriety certificates, and an Institute employee suspended for his role in unauthorized sale of OPD Cards (perhaps in performance of his regular duties as the Dy. Secretary of the Respondent-AIIMS). He

has also submitted that during this very period, he had designed a new ACR proforma for the Institute employees, and had undertaken measures to ensure writing of the prescriptions for generic medicines by AIIMS Doctors. A copy of the Self Appraisal Proforma, as filled by him for the broken period from 16.07.2014 to 16.12.2014, as submitted by him to the Dy. Director (Admn.), who, the applicant has claimed, was his Reporting Authority has been annexed as Annexure A-20, which was addressed to Shri K.C. Samaria, IAS, Joint Secretary, Ministry of Health & Family Welfare.

30. The applicant is aggrieved that his APAR for this broken period was not filled up as per the provisions of Annexure A-21, DoP&T Notification dated 31.03.2008. The applicant, therefore, sent an Office Note dated 01.05.2015 (Annexure A-22), this time addressed directly to the Director, AIIMS, complaining about the pendency of his APAR for the broken period from 16.07.2014 to 16.12.2014. Also, through his letter dated 26.05.2015 addressed to Shri V. Srinivas, IAS, the new Deputy Director (Administration), AIIMS, New Delhi, the applicant requested for the period from 17.12.2014 to 31.03.2015 to be declared as **"no record period"** for the purpose of his APAR for 2014-15, and on the same day, in regard to the pendency of his APAR for the broken period from 16.07.2014 to 16.12.2014, he sent another Internal Note once again addressed directly to Director, AIIMS.

31. Through Para 4.15 of his OA, the applicant has submitted that in the meanwhile a new Union Health Minister was appointed, and the Notification for his appointment as the President, AIIMS, was issued through Gazette Notification dated 05.12.2014 (Annexure A-23).

32. The applicant has also submitted that before he moved the reminders dated 01.05.2015 (Annexure A-22) addressed to Director, AIIMS, regarding his pending APAR for the broken period from 16.07.2014 to 16.12.2014, and had issued the letter dated 26.05.2015 addressed to Shri V. Srinivas, IAS, Deputy Director (Admn.), AIIMS, New Delhi, requesting for declaration of the broken period from 17.12.2014 to 31.03.2015 as **"no record period"**, he had also submitted a representation dated 27.04.2015 to the Director, AIIMS, with copy to Dy. Director (Admn.), AIIMS, requesting as follows:-

> "To
> The Director
> AIIMS, New Delhi.
>
> **Sub: No record period for the purpose of Annual Performance Appraisal**
> **Report (APAR) for the period from 17.12.2014 to 31.03.2015.**
>
> Sir,
>
> With respect to the above mentioned subject and for the above mentioned period (17.12.2014 to 31.03.2015), it is intimated that the undersigned was on commuted leave from

02.03.2015 to 08.03.2015 (seven days) & earned leave from 11.03.2015 to 31.03.2015 (twenty one days). Thus the total effective period during the above mentioned duration comes out to be 77 days (105 – 28 = 77) which is less than 90 days, required for making entry into APAR as per Rule 5 of All India Services (Performance Appraisal Report) Rules, 2007. Therefore, it is requested to kindly get a certificate to that effect issued at the earliest.

2. For the period, from 01.04.2014 to 15.07.2014 and from 16.07.2014 to 16.12.2014 already APAR has been completed/in the process of completion.

Regards,

Sincerely Yours,

Sanjiv Chaturvedi, IFS
Deputy Secretary,
AIIMS, New Delhi

A copy is forwarded to the DD(A), AIIMS, New Delhi for information and necessary action."

33. The applicant's case is that since the appointment of the then Union Health Minister and President, AIIMS, in the new Government had been notified on 13.06.2014, and the appointment of his successor Union Health Minister as President, AIIMS, was notified on 05.12.2014, the latter could not have been his APAR Accepting Authority under Rule 5(6) of AIS (PAR) Rules, 2015, which prescribes as follows, because of the leave availed of by him in March 2015:-

"Where the reporting authority, the reviewing authority and the accepting authority have not seen the performance of a member of the service for at least three months during the period for which the report is to be written, the Government shall make an entry to that effect in the Performance Appraisal Report for any such period".

34. The applicant's case is that when, during the broken period from 17.12.2014 to 31.03.2015, he was on leave for 28 days, 7 days' Commuted Leave from 02.03.2015 to 08.03.2015, and 21 days' Earned Leave from 11.03.2015 to 31.03.2015, and, accordingly no authority having seen his performance for 90 days during the said broken period, as neither his Reporting Authority, nor his Reviewing Authority, nor his Accepting Authority could have completed his APAR for that broken period. He is further aggrieved that in complete disregard of the above mentioned factual position, and the mandatory statutory provision, the respondents have not only rejected his representation, but through the impugned Memorandum dated 29.05.2015, and letter dated 28.05.2015, they have insisted on the applicant re-writing his APAR format even for the broken period from 01.04.2014 to 15.07.2014, for which broken period his APAR has attained finality.

35. His worry also is that the present incumbent of the Respondent No.2 position, i.e., President, AIIMS, now is the same M.P., who had written biased letters against him, and will now get to accept his APAR even for the period from 01.04.2014 to 04.12.2014 also, for which he was not notified as President, AIIMS, as the previous Minister was then the President of AIIMS from 13.06.2014 to 04.12.2014, and the new Minister became the President, AIIMS, only from 05.12.2014 onwards. He has further

submitted that in respect of the period from 05.12.2014 to 31.03.2015, the effective period of the new Minister and President, AIIMS, Respondent No.2, having seen his work for less than 90 days, he has no locus to make any entries in the applicant's APAR. His contention is that respondents are unduly forcing him to submit a new Appraisal Report for the whole year 2014-15 period, thereby trying to nullify and re-write even the APAR of the applicant for the broken period from 01.04.2014 to 15.07.2014, which has already attained finality, with the Respondent-Institute itself communicating the complete APAR of the applicant in respect of that broken period to his Cadre Controlling Authority on 09.02.2015, which had, in turn, disclosed the same to the applicant, even though, as pointed out above, the applicant has not brought on record that portion of correspondence in the present OA.

36. The applicant is, therefore, aggrieved that the impugned orders also illegally direct the applicant to fill only one APAR proforma for the entire financial year from 01.04.2014 to 31.03.2015, completely disregarding the fact that in this period, there were more than one Reporting Authorities for him, namely Shri R.K. Shukla and Shri K.C. Samaria, and, therefore, it was mandatory for more than one broken period Performance Appraisal Reports to be written for each of such broken periods. His further contention is that when his

APAR for the broken period from 01.04.2014 to 15.07.2014 has already become final, and the entries in respect of his APAR for the second broken period from 16.07.2014 to 16.12.2014 have also already been made by the then Dy. Director (Admn.) Shri K.C. Samaria, and are pending with Respondent No.3, Director, AIIMS, for Review, the respondents are blatantly violating the relevant Rules.

37. The applicant's apprehension is that the entire exercise is aimed at harming his career, and to teach him a lesson for his lawful actions in exposing corruption of high and mighty of the AIIMS. It was submitted that the respondents are hell bent on violating the statutory Rules, including their own stand taken in the past before the Delhi High Court, while rejecting his representations in an arbitrary and erroneous manner.

38. As a result, the applicant has taken the ground that the impugned order dated 29.05.2015 is liable to be quashed, because for the broken period from 01.04.2014 to 15.07.2014, the entries in the APAR of the applicant have already been completed, and communicated by the Respondent-Institute itself to his Cadre Controlling Authority on 09.02.2015, which has, in turn, also disclosed the same to him on 21.04.2015, and the Respondent-

Institute has no right whatsoever, in any manner, to get the APAR in respect of the said broken period also re-written, when the matter has already attained finality, and the present incumbent R-2 President AIIMS has no locus to make any entries in respect of APAR for that broken period. He has further taken the ground that when there are more than one Reporting Authorities during the relevant year, the Rule prescribes that mandatorily separate APARs should be written for each such broken period, and the impugned orders of the Respondent-Institute have been issued in blatant violation of this mandatory statutory provision.

39. The applicant has further taken the ground that when he was on Earned Leave and Commuted Leave for 28 days during the broken period from 16.12.2014 to 31.03.2015, the effective period comes to less than 90 days, and no APAR could have been written for this period, but the respondents have declined to issue any such **"no report period"** certificate, on which count also the impugned order dated 29.05.2015 is liable to be quashed. He had further taken the ground that while passing its order in his first OA No.661/2015 **Sanjiv Chaturvedi vs. Union of India and Others,** this Tribunal had observed that a situation should never arise, where honesty is punished and corruption rewarded, because elements in the Respondent-Institute were annoyed with the applicant, which is in blatant violation of statutory provisions

regarding APAR Rules, yet the respondents have passed the impugned order. It was further submitted that respondents being a State under Article 12 of the Constitution of India can neither violate the Fundamental Rights of the applicant, nor disregard the Directive Principles of State Policy. It was further submitted that the respondents are acting in an arbitrary and discriminatory manner, even when they are obliged to act fairly, judicially and free of discrimination, and the actions of the respondents have so far been contrary to the settled principles of law, and violate his rights under Article 14 of the Constitution.

40. While giving details of the Remedies Exhausted, in Para-6 of the O.A., the applicant had stated as follows:-

> "6. **Details of the Remedies Exhuasted**
>
> The applicant declares that he has availed of all the remedies available to him under the relevant rules applicable. That applicant had made Numerous representations followed by reminders between April, 2015 to May 2015, to the Respondents but these were rejected in blatant violation of statutory provisions of APAR Rules".

41. Respondent No.1 filed a reply affidavit on 13.08.2015 merely submitting that in regard to the prayers made by the applicant in the present OA, Respondent No.1 has got no role in the matter, and has only advised the Respondent-Institute, AIIMS, to follow the DoP&T Guidelines.

42. While no Counter Reply was filed on behalf of Respondent No.2, Respondent No.3 filed a counter reply on 14.08.2015. In this counter affidavit, sworn to by the Administrative Officer, AIIMS (Legal Cell), it was stated that applicant's APARs for the period 2012-13 and 2013-14 were reported by Director, AIIMS and reviewed by the then Health Minister & the President, AIIMS. It was further submitted that the Respondent-Institute had rejected the APAR for the year 2012-13 of the applicant, earlier reported by Shri Vineet Chawdhary, Deputy Director (Admn.), on the ground that as the C.V.O., the officer reported directly to Director AIIMS, as per the line of reporting approved by the Director, AIIMS, on 05.06.2013. However, it is seen that the reply at Para-B was a wrong submission, since the applicant's APAR for the year 2013-14 was not reported by Director, AIIMS, but was reported by Dy. Director (Admn.), and was only reviewed by the Director, AIIMS, Prof. M.C. Misra, and had been accepted by the then Union Health Minister & the President, AIIMS.

43. It was submitted on behalf of Respondent No.3 that as the Director, AIIMS, Prof. M.C. Misra, had supervised the work of the applicant for the entire year 2013-14 and 2014-15, and as the Dy. Director (Admn.) has not been notified as the Reporting Authority in

the line of reporting approved by Director, AIIMS, deviation from that could not be permissible as legal. It was further submitted that the current Union Health Minister & President of AIIMS has supervised the work of the applicant for the period from 5.12.2014 to 31.03.2015, as the date of the Gazette Notification through which he was declared to be the President, AIIMS, was published on 05.12.2004. It was submitted that the DoP&T has clarified that as regards discounting the period of leave for arriving at period of three months (90 days) for APAR purposes, this has to be regulated as per DoP&T instructions dated 11.11.2003, wherein it has been clarified that any leave for more than 15 days in one spell has to be deducted from the total period spent on any post, for the purpose of computing the period of three months (90 days).

44. It was further admitted that the applicant was on leave in one spell for 21 days' leave w.e.f. 11.03.2015 to 31.03.2015, but it was submitted that even after deducting that period of leave, the broken reporting period comes to more than 90 days, because of which the Accepting Authority can accept the APAR. It is further reiterated that the Reporting Authority, Director AIIMS, has supervised the work of the applicant for the entire period from 01.04.2014 to 31.03.2015, and as such a single APAR for this entire period has to

be recorded by the Reporting Authority, Director, AIIMS as per DoP&T guidelines in this regard.

45. It was submitted that after examining the above position, it was decided that the applicant would have to fill one APAR form for the year 2014-15, which would be reported by Director, AIIMS, Prof. M.C. Misra, and reviewed by the President AIIMS who had held the post of President, AIIMS for the period from 05.12.2014 to 31.03.2015, and, accordingly, a fresh APAR form was issued to the applicant on 28.05.2015, for re-submission of his self-appraisal.

46. In addition, it was submitted that the Respondent-Institute had sought clarification from DoP&T, as well as consulted with the Ministry of Health & Family Welfare, in regard to the completion of APAR of the applicant. While the DoP&T had stressed upon adherence to the line of Reporting and Reviewing in respect of the applicant, and further clarified that any leave for more than 15 days in one spell has to be deducted from the total period spent on any post for the purpose of computing the period of three months. As the applicant was discharging the responsibilities of CVO and Dy. Secretary up to 14.08.2014, and being CVO, he reported directly to the Director, AIIMS, as his Reporting Officer, it was submitted that even when the responsibilities as CVO were withdrawn from the applicant, and he was discharging his responsibilities only as Dy.

Secretary, AIIMS, and was reporting to the Dy. Director, AIIMS, New Delhi, as per the responsibilities being discharged by the applicant, the Reporting Authority, Reviewing Authority and Accepting Authority of his APAR during the year 2014-15 were indicated as follows:-

Period		Responsibility Of Applicant	Reporting Authority	Reviewing Authority	Accepting Authority
From	To				
01.04.14	14.8.14	CVO/Dy.Secy	Director, AIIMS	President	
15.08.14	16.12.14	Dy. Secy	Dy. Director, AIIMS	Director, AIIMS	President (Dr. Harash Vardhan)
17.12.14	31.03.15	Dy. Secy	Dy.Director, AIIMS	Director, AIIMS	President (Sh. J.P. Nadda)

47. Respondent No.3 had further challenged the validity of the part portion of the APAR form submitted by the applicant, as that form had not been issued to him by AIIMS, and he had initiated it on his own. It was submitted that it is in-appropriate to initiate the process of APAR of the applicant in the middle of the financial year, when Director AIIMS Prof. M.C. Misra, as his Reporting Officer, continued to hold charge for the full period.

48. It was further submitted that the entries made by Dr. R.S. Shukla, IAS, in the part (broken-period) APARs submitted by the applicant cannot be considered at all for the period when the applicant had held the post of CVO, and directly reported to the Director, AIIMS, and, therefore, the APAR form for the broken period from 01.04.2014 to 15.07.2014, reported upon by Dr. R.S.

Shukla, IAS, Dy. Director (Admn.), and reviewed by Prof. M.C. Misra, Director, AIIMS, though sent to the Ministry of Environment and Forest, and to the Govt. of Haryana by the Respondent-Institute itself, it cannot be considered to have attained finality, as the comments of Dr. R.S. Shukla for his period cannot be taken on record.

49. It was further submitted that by submitting his broken-period APARs on his own, the applicant has wilfully tried to by-pass both the Presidents in respect of the periods they were Presidents, AIIMS. It was further submitted that the applicant has managed to secure favour from his erstwhile superior Dr. R.S. Shukla, the then Dy. Director (Admn.), by seeking appraisal by him of his performance for the period from 01.04.2014 to 15.07.2014, which was also recorded only on 26.12.2014, much beyond the prescribed period of 30 days, within which the Reporting Officer has to report upon the APAR.

50. It was submitted that since the Respondents had to have an APAR of the applicant for the complete financial year, their actions in asking him to fill up a complete APAR form in respect of the full financial year cannot be faulted by the applicant, like he has done in the present OA.

51. It was further submitted that lawful action against corruption is always a subject of investigation, and that the necessary enquiries had been ordered in the cases pointed out by the CVO, and it was further pointed out that at the insistence of the CVC, a proposal for creation of a new post of CVO was made, and that the applicant had only been assigned additional duties of CVO, to make a stop-gap arrangement, till the regular CVO was appointed.

52. It was further submitted that as the CVO the applicant was as it is obliged to investigate and to report the matter of corruption, which work is normally expected from a responsible officer, and that after the applicant was assigned the job of vigilance, he was also required to perform certain additional functions, which he has done, even though in his O.A. he has over emphasized his role, and has indulged in self appreciation, which has no relationship with the reliefs sought for in the present OA.

53. It was reiterated that when Dr. R.S. Shukla had been relieved as Dy. Director (Admn.) from the Institute on 15.07.2014, the applicant could not have himself got his APAR for the broken period from 01.04.2014 to 15.07.2014 reported upon by the said Dr. R.S. Shukla, that too after a gap of five months, i.e., on 26.12.2014, which was not in consonance with the relevant Rule. It was submitted that the applicant was required to be reported upon only by the Director, AIIMS, and to be reviewed by the President of the

Institute. It was submitted that the applicant has manipulated in securing a broken-period APAR for the period from 01.04.2014 to 15.07.2014 written, and submitted to his Cadre Controlling Authority, while the report, being an Annual Report was required to be merged with the report for the remaining period, and submitted at the end of the financial year, since the part report for the broken period up to 15.07.2014 was pre-mature, and was wrongly filled in, by the applicant getting it signed after delay from an unauthorized Reporting Officer in December 2014.

54. It was submitted that when the respondents received the applicant's second broken-period APAR from Shri K.C. Samaria, relating to the period from 16.07.2014 to 16.12.2014, it was realised only then that an earlier APAR report had also been filed, which was required to be combined with the report of Shri K.C. Samaria, to be able to draw one APAR for the whole year.

55. It was further submitted that the applicant has wrongly alleged, without any substantial material on record, to damage the reputation and image of the incumbent Respondent No.2, and that the OA itself does not lie, as Respondent No.3, Director, AIIMS, has supervised the work of the applicant for the entire year 2014-15, and, therefore, the applicant has no reason to have his APAR

bifurcated into two separate parts, when his Reporting Officer has supervised the work for the entire year. It was submitted that the respondents are only seeking to consolidate the Annual Report, taking into consideration the observation of the Reporting Officer, to draw, and file an APAR on the work and conduct of the applicant for full one year. It was, however, submitted that following consultation with the DoP&T and Ministry of Health & Family Welfare, the Institute was willing to review its decision as per law for sending the full year's APAR to the applicant.

56. It was further submitted that OA No.661/2015 had been filed by the applicant seeking to get his cadre changed from Haryana to Uttarakhand, and the facts of that OA are not related to the completion of APAR of the applicant for the year 2014-15, which is the issue in the instant case. It was further submitted that there is no linkage with the actions taken by the applicant as CVO, as none of the officials against whom the applicant has initiated actions as CVO are associated with the decision regarding his APAR for the year 2014-15.

57. It was further submitted that Respondent No.3 has never violated any of the legal or fundamental rights of the applicant, and has never disregarded the Directive Principles of State Policy, and had never defied the constitutional mandate, and has always acted fairly, judicially and free of discrimination. It was further submitted

that the applicant has not made any representation to the respondents challenging the impugned letter dated 28.05.2015 and order dated 29.05.2015 respectively, and, therefore, the present OA is hit by Section 20 (1) of the Administrative Tribunals Act, 1985, as the applicant has approached this Tribunal directly, without first exhausting the legal remedies available to him.

58. It was, therefore, prayed that since the applicant had prayed for an interim relief which is in the nature of the final relief, and the Supreme Court has in several cases held that the Court should not grant an interim relief which is in the nature of final relief, the interim relief granted by the Vacation Bench of the Tribunal on 16.06.2015 deserved to be amended, since it was in the nature of granting final relief to the applicant.

59. Thereafter, the applicant filed a voluminous rejoinder on 01.09.2015 running into 185 pages. In this the applicant had termed the entire reply of the Respondent-Institute to be misleading, based on falsehood, and self contradictory. It was submitted that when the Respondent No.3 had himself already acted as the Reviewing Authority for the purpose of his APAR for the entire financial year 2013-14, and for the broken period from 01.04.2014 to 15.07.2014, and the Respondent-Institute had already conveyed the same to the applicant, he could not now

justify the change of his stand, and insist to act as the applicant's Reporting Authority for the same period. He had then made personal allegations against both the Respondent No. 3 and Respondent No.2, on which we need not comment here. From this rejoinder it was disclosed that when there was a delay in the applicant being relieved from his duties under the Forest Department of Govt. of Haryana, with the Ministry of Environment and Forest, Govt. of India being his ultimate Cadre Controlling Authority, beyond the immediate Cadre Controlling Authority the State Govt. of Haryana, the applicant had also filed earlier an OA No. 625/HR/12 in which the Chandigarh Bench of this Tribunal had passed an order dated 03.07.2012, which he had annexed with the rejoinder as Annexure P-2.

60. In Para (ii) of the rejoinder, the applicant had revealed that the controversy of the Standing Finance Committee (SFC), Governing Body (GB), Institute Body (IB) and Commitment given to the Standing Parliamentary Committee on 08.06.2012 regarding assigning the charge of CVO to the officer joining at the post of Dy. Secretary, were all mentioned in the file Noting of the CVO of the Ministry of Health & Family Welfare, which file Noting he had annexed as Annexure A-13 of the OA (without any legally obtained

certified copy having been attached, as we have already pointed out above).

61. He had further submitted that all this was also mentioned in the letter dated 06.06.2013 addressed by the Chairman of the Standing Parliamentary Committee, of which the present incumbent Respondent No.2 was also a Member, which letter he had annexed as Annexure P-3 to the said rejoinder, which was a letter by Shri Brajesh Pathak, Member of Parliament, and Chairman, Department-Related Parliamentary Standing Committee on Health and Family Welfare, to Shri V. Narayanasamy, the then Hon'ble Minister of State for Personnel (of which the applicant was neither an authorized recipient, nor had he obtained a copy of the same in an authorized manner, under the RTI Act or otherwise).

62. In the rest of Para (iii, iv & v) in his rejoinder, the applicant had only gone on to make further personal allegations against the present incumbent Respondent No.2, which are not the subject matter of the present OA, and, cannot be commented upon by us here, because the applicant has failed to array the said incumbent Respondent No.2 in his individual capacity, and has only arrayed him as a respondent in his official capacity, and the incumbent of Respondent No.2 post has, therefore, not had an opportunity to

reply to any of the averments made by the applicant, without him having been made as an individual party respondent in this OA.

63. In Para (vi) of the rejoinder, once again, the applicant had made personal allegations against the present incumbent of Respondent No.3 post, without making the incumbent concerned as a party-respondent in his individual capacity, and then alleging *malafides* against him, when the person concerned could have had an occasion to reply to the averments made by the applicant. Therefore, we refuse to take any cognizance of these averments also, made behind the back of the concerned individual without making him as a party-respondent in his individual capacity, and thereby, affording him an opportunity to furnish his reply in his individual capacity.

64. For the same reason, the contents of the rejoinder in Para-2 (i), (iii), (v) & (vi) also cannot be taken into consideration by us, as malafides have alleged by the applicant against the present individual incumbent of the post of Respondent No.2, without making him as a party respondent in his individual capacity in the OA, and thus allowing him an opportunity to rebut any of these averments.

65. At Annexure P-10 of the rejoinder, the applicant has produced a portion of the photocopy of the Note Sheet of the Ministry of Health & Family Welfare file of November, 2012, without any covering letter showing that it has been obtained by him under the RTI, Act, or in an authorized manner, from the keeper of that public document u/s 78 of the Indian Evidence Act-I of 1872. Similarly, at Annexure P-9 was a letter from the office of CVC to Shri R.S. Shukla, JS & CVO, Ministry of Health & Family Welfare, dated 03.09.2012, of which also the applicant was not an authorized recipient, but he has produced a copy of that communication without disclosing the source as to how and in what legal manner he had obtained a copy thereof, and had come to be in legal possession of a copy of that letter.

66. Annexure P-11 (colly) letters dated 07.07.2010 (page 95 of the rejoinder), 25.01.2008 (page 96 of the rejoinder), 29.12.2007 (page 97 of the rejoinder), 16.11.2007 (page 98 of the rejoinder), 08.11.2007 (page 99 of the rejoinder), 04.10.2005 (page 100 of the rejoinder), 05.09.2005 (page 101 of the rejoinder), must all have been in the custody of the applicant himself, when he was holding the post of CVO, AIIMS, on additional charge basis, along with his substantive post of Dy. Secretary, AIIMS, but still the law of the land does not permit him to unauthorisedly copy and keep

photocopies of these documents, and to use & file them in the pleadings in the manner which he has done in this OA.

67. Annexure P-12 is a letter dated 24.12.2012 from Ministry of Health & Family Welfare to the Secretary, CVC, once again a copy of which had not been marked to the applicant, and he has again failed to explain as to how and in what legal manner he had obtained a copy thereof, and had come to be in legal possession of a copy of this letter produced along with his rejoinder. Page-104 of the rejoinder is a copy of Page-54 of the Note Sheet file of the Ministry of Health & Family Welfare, of March & April 2013, which again is not accompanied by a covering letter, showing that it had been obtained by the applicant under the RTI Act, or in any lawful or legal manner, when he could have possessed the same, and produced it as an Annexure to his rejoinder.

68. At pages 105 to 166 of the rejoinder was the **"Confidential" Draft Report No. 87 of the Department related Parliamentary Standing Committee of Health and Family Welfare of the Parliament of India-Rajya Sabha** on the functioning of the AIIMS. It is trite law that under the Parliamentary procedure, such Draft Reports of Parliamentary Standing Committees are fully Confidential, till they are finalized and laid on the table of the House concerned, and then come into the public domain. However, the very fact that the applicant has had the gumption of not only

coming to acquire, through unknown means, which cannot certainly be legal or authorized, a copy of the said Draft Report, but has also had the audacity and the gumption to annex the said Drat Confidential Report of the Parliamentary Standing Committee illegally or unauthorizedly obtained by him (which is impermissible under the law relating to the functioning of Department-Related Parliamentary Standing Committees of the Rajya Sabha or Lok Sabha) only goes to show an inherent disrespect on the part of the applicant towards the laws of the land, and displays the impertinence of the applicant, and goes to show the unethical manner in which he goes around illegally obtaining copies and documents from anywhere and everywhere for his benefit, without bothering about the legal and proper means for acquiring those documents, and his possession of those documents being legal or illegal !!!

69. Annexure P-14 is once again a letter from the Govt. of India, Ministry of Environment, Forests & Climate Change, addressed to the Secretary, Department of Health & Family Welfare, of which also the applicant was not supposed to be in an authorised possession, and a copy of that had not been marked to him, but he has had the audacity of somehow securing its illegal possession, and produce it as a part of the rejoinder. At Annexure P-15 he has

reproduced the AIIMS Establishment Section-I(DO) Notification dated 21.08.2013, giving a channel of Reporting of APAR in respect of Deputy Secretary at the AIIMS, New Delhi, which stated as follows:-

"ALL INDIA INSTITUTE OF MEDICAL SCIENCES
ESTABLISHMENT SECTION-I9(D)

No.F.6-96/2012-Estt.I **Dated the: 21 AUG 2015**

NOTIFICATION

Subject: Channel of Reporting of APAR in respect of Deputy Secretary on deputation at the AIIMS, New Delhi.

In pursuance of DOPT's Letter No. 3/2/2014-EO(PR) dated 10.07.2015, the competent authority, taking into consideration the provisions laid down in Rule 5.3 of PAR Rules 2007 as applicable to the officers of All India Service Cadres, is pleased to decide the channel of Reporting/Reviewing/Accepting Authority for Deputy Secretary, AIIMS for 2015-16 as under :-

1.	Reporting Officer for Reporting PAR of Dy. Secretary (on deputation) at AIIMS	- Dy. Director,(Admn) AIIMS
2.	Reviewing Officer for Reviewing PAR of Dy. Secretary (on deputation) at AIIMS	- Director, AIIMS
3.	Accepting Authority for Accepting PAR of Dy. Secretary (on deputation) at AIIMS	- President, AIIMS

(LALIT ORAON)
ADMN. OFFICER(DO)"

70. At Annexure P-16 (pages 169 & 176), the applicant had produced copies of the entries made (and its typed copies) in Section-III of his APAR for the broken period from 16.07.2014 to 16.12.2014 by Shri K.C. Samaria on 30.03.2015, which also does not appear to have been communicated/supplied to him officially by either the AIIMS, or by his Cadre Controlling Authority, in its

present incomplete form. At Annexure P-17 of the rejoinder, the applicant has produced a copy of a letter dated 12.05.2015 addressed by the Chief Administrative Officer of AIIMS to Shri K.C. Samaria, Joint Secretary, regarding the entries made by him in the applicant's broken period APAR, which communication also was marked as **'Confidential',** as written on top of the letter itself, and the applicant before us was not the recipient of that letter, and has obviously obtained it illegally and unauthorisedly, for producing it before this Tribunal.

71. At Annexure P-18 (Page-179), once again the applicant has produced a typed copy of a Noting or letter, without indicating as to how he has got access to the same. Page-180 of the rejoinder was photocopy of a Newspaper concerning the applicant, and page-181 was a letter forwarding the applicant's ACRs/PARs for the last 5 years, from the Ministry of Environment & Forests to the Ministry of Health & Family Welfare, through letter dated 28.08.2014, and once again it is seen that the applicant was not an authorized recipient of a copy of that communication also.

72. At page-182 of the rejoinder was a letter dated 01.08.2013 addressed by Deputy Director (Admn.) of AIIMS to the Secretary, Ministry of Health & Family Welfare, regarding the applicant's reply to complaints received against him from the Ministry, but no copy of that also had been marked officially to the applicant, and he has

not shown as to how he was an authorized recipient of that communication. At Annexure P-19 (page-183) was a letter from the Chief Vigilance Officer, Medical Council of India, addressed to the Director, AIIMS, dated 29.05.2013, which the applicant might have had access to in the course of his official functioning in the post of Dy. Secretary & CVO, but he was certainly not authorized to take a photocopy of the same from the official records, keep it in his custody illegally, and annex it to his rejoinder, as he has done.

73. Similarly, the applicant has enclosed at pages-184, 185 & 186 of the rejoinder a copy of his Noting put up to the Dy. Director (Admn.) and then to Director, AIIMS, which are not in continuity, and merely the dates of 25.02.2014, 18.06.2014, and 10.07.2014, appearing below his signatures, go to show that the applicant was in the habit of even keeping photocopies of the official Notes put up by him as CVO of AIIMS in an unauthorized and illegal manner.

74. Heard. As mentioned above in para 6 also, after the case was argued in detail and reserved for orders on 29.10.2015, but before the judgment could be dictated, in the month of November, the learned counsel for the applicant had made a mention of the case in the open Court and prayed that the matter be listed 'For Being Spoken to', as he wanted to make certain more submission in regard to the case. By then, as per the liberty given in the open Court, the learned counsel for the applicant had already filed his

written arguments also on 02.11.2015. However, going out of the way, since the judgment was not yet dictated, the case was listed 'For Being Spoken to' on 26.11.2016, and the further submissions of the learned counsel for the applicant, particularly with regard to the written arguments filed by him on 02.11.2015, were once again heard. He also filed a copy of the relevant Rules in this regard, which were taken on record, and the case was reserved for orders once again that day on 26.11.2015.

75. We have already discussed the case of the applicant in detail as made out in the OA, as well as in the rejoinder. In the written arguments as submitted and further buttressed by the oral arguments on 26.11.2015, it was submitted on behalf of the applicant that apart from the prayers made in the OA praying for quashing the impugned order dated 29.05.2015 and letter dated 28.05.2015, this Tribunal should also declare that finality had been attained in respect of APAR of the applicant for the broken period from 01.04.2014 to 15.07.2014, and further directions had been sought upon Respondent No.3 to complete the entries in the APAR Form submitted by the applicant for the second broken period from 16.07.2014 to 16.12.2014, which Form had been forwarded to him by Shri K.C. Samaria, the then Dy. Director (Admn.), AIIMS, so that

he could then forward it to the then President, AIIMS, for completion of APAR for that period.

76. It was further pleaded on behalf of the applicant for directions upon the Respondent No.1 to issue a certificate/make an entry to the effect that the period from 16.12.2014 to 31.03.2015 has to be treated as **"no report period",** in view of the fact that neither the Reporting Authority, nor the Reviewing Authority, and nor the Accepting Authority had viewed the performance of the applicant for 90 days during the said period, as is required under Rule 5(6) of All India Services (Performance Appraisal Report) Rules, 2007. The political colour to his pleadings, which the applicant has tried to give both in the OA as well as in the rejoinder, was again repeated in the written submissions also, but this Tribunal refuses to be drawn into the politics of the matter, as while exercising our power of judicial review, we are only concerned with the Acts, Rules and Regulations having been followed by all concerned at all stages.

77. In his written arguments, the learned counsel for the applicant had submitted that between February, 2015 to October 2015, he was forced to approach the Tribunal 5 times, in OA No.661/2015, regarding his request for cadre transfer, in OA No.1887/2015 praying for work allocation, in OA No.2175/2015, which is the

present OA regarding his APAR for the year 2014-15, in OA No.2279/2015 regarding the matter of his promotion having been withheld illegally, and in OA No.3684/2015 regarding Central Government deliberately sitting over his case of inter-state deputation to Govt. of NCT of Delhi, which case is still pending adjudication. Thus, while his first OA No. 625/HR/12 before the Chandigarh Bench of this Tribunal, and OA No. 661/2015, O.A. No.1887/2015, and OA No.2279/2015 before this Principal Bench had been disposed of by this Tribunal, even after orders are passed in the present OA, his case in OA No. 3684/2015 would still remain to be decided by this Tribunal. All the four cases decided so far by the Tribunal at Chandigarh Bench and Principal Bench have gone in favour of the applicant, and it was claimed that the applicant has, thus, defeated **"persistent attempts on part of powers that be to persecute the applicant for his honest discharge of duties".**

78. In Para-2 of the written submissions, the applicant had again pointed out the various duties and functions performed by him while working as CVO in the Respondent-Institute, which he was wont to, and he had then quoted from the Draft Report of the Parliamentary Standing Committee (Annexure P-13 of rejoinder) (supra). The applicant had thereafter submitted that his APAR for the years 2010-11 and 2011-12 had been restored as Outstanding

by extra-ordinary Presidential orders, and had then gone on to cite from his APAR for the year 2012-13 and 2013-14, from which the remarks of the Dy. Director (Admn.) and Director, AIIMS were cited. He had further cited from the incomplete broken portion APAR for the period from 16.07.2014 to 16.12.2014, the legality of which is under consideration in the present OA, in which the then Dy. Director (A) Shri K.C. Samaria had recorded some favourable remarks. He had again cited from the letter dated 23.05.2014 (Annexure A-13 of the OA), the file Noting of the Joint Secretary & CVO, addressed to the Secretary, Ministry of Health & Family Welfare, about which we have already commented, as that Noting having been obtained by the applicant by unauthorized/illegal means. It was further submitted that the applicant was recently conferred with prestigious Ramon Magsaysay Award, and he was its youngest civil servant recipient, and he had reproduced from the citation of that award. It was further submitted that in his two years' tenure as CVO, there was not a single complaint against him.

79. The written submissions in Para-4 onwards, once again made derogatory comments against the incumbents of R-2 & R-3 posts, who were not named as party respondents in their individual capacities in this OA, and have not been able to defend their case personally against his comments, and, therefore, we need not advert to them. It was followed by a table giving the applicant's

understanding of as to who were his Reporting Authority, Reviewing Authority and Accepting Authority in respect of the three broken periods in 2014-15, from 01.04.2014 to 15.07.2014, from 16.07.2014 to 16.12.2014, and from 17.12.2014 to 31.03.2015. It was, therefore, reiterated during arguments of the learned counsel for the applicant, and through his written submissions, that once an APAR for the broken period from 01.04.2014 to 15.07.2014 had attained finality, no authority has any power to make any change in the same.

80. Assailing the stand of the respondents through the impugned order and letter that there should be only one consolidated APAR for the entire financial year 2014-15, it was submitted that the year has necessarily to be broken into three broken portions, as per the understanding of the applicant, and in respect of the last third broken period from 17.12.2014 to 31.03.2015, in view of his having proceeded on Earned Leave, the period concerned had been reduced to less than three months, and no report could have been written for that period. The applicant had once again made personal allegations against the incumbent of Respondent No. 2 post by name, which we have already mentioned above, and need not advert to those averments. It was further submitted that it was wrong on the part of the respondents to submit that he had of his own volition submitted the APAR format, by breaking down the year into

three broken periods, as the Administrative Section of the Institute had never supplied him the blank APAR proformae. It was submitted that if the blank APAR proforma is not supplied by 1st of April, the Officer concerned is free to download the same, and forward it to his Reporting Authority. It was further submitted that the proforma enclosed alongwith the impugned letter dated 28.05.2015 is that of I.A.S. Officers, while the applicant is an IFS Officer, and the domain assignment for IFS Officers is entirely different from that in respect of IAS Officers. The applicant had then again ridiculed the action on the part of Respondent No.3, submitting that he could not have acted as Reporting Authority for the broken period from 01.04.21014 to 15.07.2014, for which he has already acted as Reviewing Authority, finalised the broken period APAR, and even conveyed it to the applicant directly, as well as through his Cadre Controlling Authority.

81. In response to the queries put by the Bench during the course of hearing of the case on 29.10.2015, when the case was first reserved for orders, a detailed Paragraph-6 was included in the written submissions of the learned counsel for the applicant, which we have considered. It was admitted in this Paragraphs that as per Rule 5(2) of AIS (PAR) Rules, 2007, the reference point for generating APAR for any particular period during a financial year is the relinquishing of the charge by either the Reporting Authority, or

the Reviewing Authority, or the Reported Officer, as the Rule does not contain any specification in regard to Accepting Authority. It was, therefore, submitted that when the applicant's APAR was already generated for the second broken period from 16.07.2014 to 16.12.2014 by the Reporting Authority Shri K.C. Samaria, the then Dy. Director (Admn.), though much after relinquishing the charge on 16.12.2014, it could not have been withheld by the Reviewing Authority, the Director, AIIMS. He had further made certain comments regarding the previous incumbent Accepting Authority, and the present incumbent as Accepting Authority, with which, obviously, as per the applicant's own admission and submission, we are not concerned, as per Rule-5(2) of the Rules (supra).

82. In Paragraph-7 of the written submissions on behalf of the applicant, it was submitted that since the applicant was on leave for 21 days of Earned Leave and 8 days of Commuted Leave during the period from 17.12.2014 to 31.03.2015, the applicant is willing to submit his Self Appraisal Report for that broken period, but it was prayed that this Tribunal should pass clear orders for the respondents to make an entry for that period to be a **"no report period"**, since the effective period of his working comes out to only 76 days, which is less than three months (90 days), as prescribed under Rule 5 (6) of the Rules (supra). In Para-9 of the written submissions, once again certain derogatory comments had been

made by naming individuals, who have not been arrayed as opposite party respondents in the OA in their individual capacities, and they have not had any occasion to controvert or rebut the contentions of the applicant, and, therefore, we refrain from taking notice of the contents of that paragraph.

83. In Para-10 of the written submissions on behalf of the applicant, it was submitted that the respondents have deliberately made certain false statements in their counter affidavit dated 11.08.2015, for which this Tribunal should initiate perjury proceedings against them. It was further requested that this Tribunal may direct the Respondent Government to initiate major penalty departmental proceedings against all the concerned officials of the Institute for falsification of records regarding the date of Notification of the President, AIIMS, in the impugned order, in order to damage the career of the applicant, as the CVC's instructions specifically asked for such proceedings regarding falsification of records. At pages 28 to 38 of the written submissions, the complete set of papers in respect of the applicant's APAR submission for the broken period from 16.07.2014 to 16.12.2014 was enclosed, which was incomplete in the earlier pleadings. From pages 39 to 51, the Govt. of India's instructions and decisions issued under the All India Services (Confidential Roll) Rules, 1970, which are relevant to

the newly promulgated All India Services (Performance Appraisal Report) Rules, 2007, were reproduced.

84. When the case was listed 'For Being Spoken to', on 26.11.2015, the learned counsel for the applicant had also filed a copy of the complete set of All India Services (PAR) Rules, 2007. On the other hand, after having reiterated all the contentions taken by them in their counter reply, during his oral arguments, the learned counsel for respondents had filed written submissions on 31.10.2015. As noted earlier also, the case of the respondents is that the present OA is hit by Section-20 (1) of the Administrative Tribunals Act, 1985, as the mandatory requirement of that section has not been complied with before filing of the present OA, and the applicant has not made any representation to the respondents in respect of the impugned letter dated 28.05.2015 and Memorandum dated 29.05.2015 before filing the present OA. It was submitted that this Tribunal has in **Raj Kumar & Ors. vs. Delhi Transport Corporation,** OA No.857/2013, vide order dated 27.03.2014, held as under:-

> "Section 20 (1) of the Administrative Tribunals Act, 1985 mandates that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him. Applicants herein have not shown any reason as to why they did not make any representation to the Chairman-cum-Managing Director of the Corporation against the two O.As dated 20.02.2013."

85. It was also submitted that the OA is further not maintainable in view of the law as laid down by the Supreme Court in the case of **State of Maharashtra vs. Vikas Sahebrao Roundale and Ors. 1992 (4) SCC 435**, and **State of Punjab vs. Renuka Singla 1994 (1) SCC 175,** wherein it has been categorically laid down that no Court should direct the statutory authority to violate the Rules. It was further submitted that this OA is further liable to be dismissed in view of the decision of the Privy Council in the case of **Nazir Ahmed vs. Emperor, AIR 1936 P.C. 253,** wherein it was held that a thing which cannot be done directly, the same cannot be permitted to be done indirectly. It was submitted that similar view was taken by the Supreme Court in **Shiv Kumar Chadha vs. Municipal Corporation of Delhi, 1993 (3) SCC 161.** It was submitted that the applicant wants to get his ACR written by the Authorities as per his wishes and desires, contrary to the mandatory provisions of AIS (PAR) Rules, 2007, which is not permissible in law, and that the impugned letter and Memorandum are perfectly valid, legal and maintainable in law, and the applicant has not yet submitted his Self Appraisal Report for the year 2014-15, which is mandatorily required, as per the APAR Rules (supra).

86. It was further submitted that the Gazette Notification dated 05.12.2014 had notified the present incumbent as Respondent No.2 President of AIIMS, and that, therefore, the present incumbent of Respondent No.2 post has supervised the work of the applicant for more than 90 days, which cannot be denied by the applicant. It was further submitted that the applicant cannot seek directions upon the Respondent No.3 to complete the entries in his partial APAR, submitted by him for the broken period from 16.07.2014 to 16.12.2014, and forwarded to him by Shri K.C. Samaria, the then Dy. Director (Admn.), AIIMS, rather than sending it to AIIMS Administration, and then get it forwarded to the previous incumbent President of AIIMS, as such reliefs claimed by the applicant are beyond the ambit and scope of Rule 5 (2) and 5 (3) of AIS (PAR) Rules, 2007.

87. It was further submitted that the incumbent Respondent No.3, Director, AIIMS, has indeed supervised the work of the applicant for the full financial year from 01.04.2014 to 31.03.2015, and, as such, the APAR for the entire year period has to be recorded by the Director, AIIMS, and since the incumbent President, AIIMS, has supervised the work of the applicant for more than 90 days in the year, even after deducting the period of leave availed of by him in one spell in the month of March, 2015, he would be the proper Accepting Authority, under DoP&T guidelines. It was submitted

that once it was decided that the applicant would have to fill one single APAR form for the whole year 2014-15, which would have to be reported by Director, AIIMS, Respondent No.3, and reviewed by the incumbent President, AIIMS, a fresh APAR Form was issued to the applicant on 28.05.2015, for re-submission of his Self Appraisal to the AIIMS. It was, therefore, once again prayed that the OA is devoid of any merits, and is liable to be dismissed.

88. Heavy reliance was also placed by the learned counsel for the respondents on the above cited case of **State of Maharashtra vs. Vikas Sahebrao Roundale and Ors.** (supra), in which, in its judgment dated 11.08.1992, the Hon'ble Apex Court had in Paragraph-11, in particular, held as follows:-

> "11.....In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges. or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. **The directions to the appellants to disobey the law is subversive of the rule of law,** a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Art. 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc."
>
> (Emphasis supplied)

89. We have given our anxious consideration to this case. We have to deal with this OA on two aspects. First is the merit of the prayers, and second is the legal aspects. In so far as the merit of the prayer made by the applicant in this OA is concerned, the applicant wants to necessarily divide his APAR for the year 2014-15 into three broken period portions, as have been repeatedly reiterated by him. However, as had been submitted and admitted on his behalf in Paragraph-6 of the written submissions dated 02.11.2015, the reference point under Rule-5(2) of AIS (PAR) Rules, 2007, for generating a separate APAR for any particular broken period during a financial year, is the relinquishing of the charge by (a) either the Reporting Authority, (b) or the Reviewing Authority, or (c) the Officer Reported upon, and the Rule does not include in this category a change in the incumbent Accepting Authority, which, we accept, is the correct position of law. Through the OM dated 20.05.1972, as reproduced in the **"Copies of Orders"** in Swamy's Compilation on "Confidential Reports of Central Government Employees, 12th Edition 2011", the frequency of reporting and eligibility to write a report has been defined as follows:-

> **"6. Frequency of reporting and eligibility to write a report-** while normally, there should be only one report covering the year of report, there can be situations in which it becomes necessary to write more than one report during a year. **There is no objection to two or more independent reports being written for the same year by different Reporting Officers in the event of a change in the Reporting Officer during the course of a year, provided that no report should be written unless a Reporting Officer has at least three months' experience on which to**

base his report. In such cases, each report should indicate precisely the period to which it relates and the reports for the earlier part or parts of the year should be written at the time of the transfer or immediately, thereafter and not deferred till the end of the year. The responsibility for obtaining confidential reports in such cases should be that of the Head of the Department or the Office.

[C.S., O.M. No. 51/5/72-Ests. (A), dated the 20th May, 1972.]"

(Emphasis supplied)

90. On the point of transfer of Reporting and/or Reviewing Officer in the middle of the reporting year, the Director General Posts and Telegraph letter No. 27-3/79.Disc.I dated the 11th September, 1981, reproduced at Sl. No.7 of the **"Copies of Orders",** in the same Swamy's Compilation, states as follows:-

"7.**Transfer of Reporting and / or Reviewing Officer in the middle of the reporting year - If an officer is transferred during the middle of the reporting year he/she should immediately write the APARs of his/her subordinates in respect of the year for the period up to the date of his transfer, provided that the period is at least six months, and the reports should be submitted to the reviewing authority who will retain them in his custody and record his remarks in the reviewing portions in the last of the reports for the year, taking into account the reports for the previous portions of the year also, submitted to him by the transferred officers, at the time of their transfer. If the reviewing authority is transferred not simultaneously with Reporting Officer, but after sometime, he will hand over such reports to his successor and the successor will review the reports if he happens to have three months' experience. Otherwise, the previous reviewing authority will review the reports at the end of the year. If, however, a reviewing authority retires while there is no change in the Reporting Officer and the subsequent reviewing authority does not have three months' experience of the work and conduct of the reportee, the reviewing portion will be left blank with a suitable note, recorded therein. This note can be recorded by the new reviewing authority who could not review the report because he did not have even three months' experience, or by the Reporting Officer himself.**

[D.G. P.&T., Letter No. 27-3/79-Disc.1, dated the 11th September, 1981].

(Emphasis supplied)

91. Further, in regard to the aspect that a Confidential Annual Report should be written within one month of the expiry of reported period by the Reporting Officer, the Govt. of India D.P.& A.R. O.M. No. 21011/1/77-Estt., dated the 30th January, 1978, at Sl. No.9 of the **"Copies of Orders"** of the same Swamy's Compilation, had prescribed as follows:-

"9. **Report to be written within one month of the expiry of report period – The annual report should be recorded within one month of the expiry of the report period** and delay in this regard on the part of the Reporting Officer should be adversely commented upon; if the officer to be reported upon delays submission of self-appraisal, this should be adversely commented upon by the Reporting Officer.

[G.I., D.P.& A.R., O.M. No. 21011/1/77-Estt., dated 30th January, 1978]."

(Emphasis supplied)

92. In regard to the aspect as to when there is no Reporting Officer having the requisite experience, the DoP&T O.M. No. 21011/8/85-Estt (A), dated the 23rd September, 1985, at Sl. No.10 of the **"Copies of Orders"** of the same Swamy's Compilation, had prescribed as follows:-

10. **When there is no Reporting Officer having the requisite experience** – A question has been raised as to the course of action to be adopted when, in case of an officer, there is no Reporting Officer having the requisite

> of three months or more during the period of report, as a result of which no Reporting Officer is in a position to initiate the report. It has been decided that where for a period of report there is no Reporting Officer with the requisite experience to initiate the report, the Reviewing Officer himself may initiate the report as a Reporting Officer, provided the Reviewing Officer has been the same for the entire period of report and he is in a position to fill in the columns to be filled in by the Reporting Officer. Where a report is thus initiated by the Reporting Officer, it will have to be reviewed by the officer above the Reviewing Officer.
>
> [G.I. Dept. of Per. & Trg. O.M. No. 21011/8/85-Estt.`A' dated the 23rd September, 1985).

93. In regard to the aspect of as to which Authorities can make entries in the Confidential Reports (APAR now), the Director General, Post & Telegraph letter No. 27-2/83-Vig.II, dated the 21st January, 1983, at Sl. No.11 of the **"Copies of Orders"** printed in the same Swamy's Compilation, states as follows:-

> "11. **Authority other than Reporting/Reviewing authority precluded from making entries -** Under the present scheme of writing of confidential reports, there are only two levels for writing reports, namely, the Reporting Officer and the Reviewing Officer. **There is no provision for any other authority for writing his remarks/comments about the work and conduct of an officer in his confidential reports.** The Department of Personnel have advised that since there are only two levels for writing the confidential reports, i.e., reporting and reviewing authority, the remarks by an officer other than the reporting and reviewing officers in the confidential report are not in order."
>
> [D.G., P.&T., Letter No. 27-2/83-Vig.II, dated the 21st January, 1983]
>
> (Emphasis supplied)

94. At Sl. No.30 of the **"Copies of Orders"** in the same Swamy's Compilation is the D.G. P&T, letter No. 27/3/80-Vig.II/Pt. II, dated the 11th September, 1980, issued in consultation with DoP&T, which states as follows:-

> **"30. Self-appraisal not necessary for a period less than three months-** The Reporting/Reviewing Authority can write/review the confidential report of an officer if it has at least an experience of three months of work and conduct of the officer reported upon. **The officer reported upon need not submit his self-appraisal if the period of observation of his work and conduct by the reporting/reviewing authority is less than three months."**
>
> [D.G. P&T, letter No. 27/3/80-Vig.II/Pt. II, dated the 11th September, 1980, issued in consultation with Deptt. of Per.]
>
> (Emphasis supplied)

95. The order concerning cases of Officers on deputation issued through O.M. No. 51/5/72-Ests. (A), dated the 20th May, 1972 has been reproduced at Sl. No.40 of the same Swamy's Compilation, which states as follows:-

> "**40. In the case of officers on deputation-** In the case of Central Government Officers who are deputed to other Departments/State Governments or are on foreign service, the confidential rolls should be maintained by their parent departments and the periodicity of such confidential reports should be the same as in the parent department. **It will be the responsibility of the parent department to obtain the reports of their officers on deputation and maintain them."**
>
> [C.S. O.M. No. 51/5/72-Ests. (A), dated the 20th May, 1972, Para 3.2].

96. Through the DoP&T O.M. No.35014/4/83-Estt. (A) dated the 23rd September, 1985.], printed at Sl. No.54 of the **"Copies of**

Orders" in the same Swamy's Compilation, which we are not reproducing here, the Time-Schedule for preparation of Confidential Reports had been prescribed, and the duties and responsibilities of the Reporting Officer, and the Reviewing Officer, had been clearly spelled out, as has been brought out before us in the pleadings of the present OA also. Thereafter, the aspect of timely preparation and proper maintenance of ACRs was prescribed through DoP&T O.M. No. 21011/02/2009-Estt. (A), dated the 16th February, 2009, which is reproduced at Sl. No.55 of the **"Copies of Orders"** of the same Swamy's Compilation, which also we are not reproducing here. After the introduction of the APAR system these instructions were further buttressed on the same lines by issuance of a detailed DoP&T O.M. No. 21011/1/2005-Estt. (A) (Pt. I) dated the 23rd July, 2009, which also we are not reproducing here, and which has been printed in the same Swamy's Compilation at Sl. No.56 of **"Copies of Orders".**

97. In regard to the ACRs of Chief Vigilance Officers, the instructions were issued through DoP&T O.M. No. 122/2/85-AVD.I dated the 28th January, 1986, which has been reproduced in the same Swamy's Compilation at Sl. No.64 of the **"Copies of Orders"**, which we may reproduce here:-

> "**64. ACRs of Chief Vigilance Officers-**
>
> -> In regard to Chief Vigilance Officer, who are working on a full time basis, their Confidential Reports shall be written by the Secretary of the Ministry/Department concerned. Thereafter the Report would be reviewed by the Minister.

-> **As regards Chief Vigilance Officers working on a part-time basis in addition to other items of work, where the vigilance work forms the major part of the Government servant's work, the head of the Department would write the Annual Performance Assessment Report after obtaining the opinion of the immediate superior about the performance of the Government Servants reported upon in the non-vigilance areas and thereafter the report would be reviewed in the manner indicated above.**

-> **Where the vigilance work forms only a small part of the work of the part-time Chief Vigilance Officer and he is mostly engaged on other work, the Reporting Officer in respect of the major items of work would record his assessment in respect of non-vigilance work and submit the same to the Head of the Department, who will not only review the Report but also add his remarks about vigilance work.**

-> **The work of the Chief Vigilance Officer will also be assessed by the Central Vigilance Commissioner as provided in the Government Resolution setting up the Central Vigilance Commission.**

(G.I. Department of Personnel & Training O.M. No. 122/2/85-AVD.I dated the 28th January, 1986 and Para 6.6 of Brochure on Preparation and Maintenance of Confidential Reports)."

(Emphasis supplied)

98. In this O.M. dated 28.01.1986 (supra), two scenarios have been prescribed in respect of Chief Vigilance Officers, working as such on a part-time basis, in addition to other items of work. It has been prescribed that where the vigilance work forms the major part of the Government servant's work, the Head of the Department alone would write the Annual Performance Assessment Report, after obtaining the opinion of the immediate superior about the performance of the Government Servant reported upon, in respect of his work-performance in the non-vigilance areas. Further, it has been prescribed that where the vigilance work forms only a small

part of the work of the part-time CVO, and he is mostly engaged on other items of work, the Reporting Officer in respect of the major items of work would record his assessment in respect of non-vigilance work, and submit the same to the Head of the Department, who will then not only review the Report, but also add his remarks about vigilance work. In both cases it has been stated that the work of the CVO will also be assessed by the Central Vigilance Commissioner, as provided in the Government Resolution setting up the Central Vigilance Commission.

99. Even though this Circular had mainly dealt with the CVOs in the Govt. of India Ministries and Departments concerned, it is clear that these instructions shall apply *mutatis mutandis* to the CVOs in other organizations also, including AIIMS.

100. The entire case of the applicant is that the major work assigned to him, soon after his joining as Dy. Secretary of AIIMS, was that of CVO of AIIMS, through Memorandum dated 07.07.2012 (Annexure A-6), which had stated as follows:-

"MEMORANDUM

> The Director has been pleased to order that Shri Sanjiv Chaturvedi, Deputy Secretary who has recently joined shall act as the Chief Vigilance Officer of the Institute. Further, in accordance with Regulation 11 of the AIIMS Regulations, 1999 (as amended), the Director has allocated the work of the following branches to him in addition to his duties and responsibilities as CVO with immediate effect till further orders:-
>
> 1. General Section

2. Estate Section
3. He will also be the Nodal Officer for Grievance of Officers/Staff
4. He is also authorized to sign the pension papers of the Officers/Staff.

The Administrative Officers/AAOs/OS of the concerned Sections/Cells shall submit files directly to him.

(Vineet Chawdhry)
Deputy Director (Admn.)"

101. Therefore, from the contents of the above Annexure A-6 dated 07.07.2012, we accept the case of the applicant before us that the major part of his work was as the CVO of AIIMS. Only thereafter, some minor additional duties had been assigned to him, in regard to General Section, Estate Section, and being Nodal Officer for Grievances of Officers/Staff, and authorized to sign the pension papers of the Officers/Staff. The applicant has also recounted and boasted in his entire pleadings in the O.A. about his achievements as the CVO. Therefore, it is clear that in terms of the above O.M. dated 28.01.1986, for the entire period from 07.07.2012 till 14.08.2014, when the order at Annexure A-12 had been issued, relieving the applicant from the charge of CVO, only the Head of Department, i.e., the Director of AIIMS, could have been, and was his Reporting Officer. Any input from his immediate superior, the Dy. Director (Admn.), could only have been a part of the consultation of Director of AIIMS, before writing the applicant's APAR as his Reporting Officer.

102. Even the applicant also has claimed his APAR for the year 2012-13 (Annexure A-16) to have been correctly written, by the then Director, AIIMS, Shri R.C. Deka as the Reporting Officer on 05.08.2013, and since thereafter there could have been no Reviewing Authority above the Director, his APAR for 2012-13 was directly sent to the then Hon'ble Union Minister of Health & Family Welfare and President, AIIMS, who accepted that APAR. Therefore, the applicant's APAR for the year 2012-13 was perfectly in order, and written in an absolutely legal and correct manner.

103. In respect of the applicant's APAR for the year 2013-14, it is seen from Annexure A-18 of the OA that even though the applicant was the CVO of AIIMS, in violation of the above cited O.M. dated 28.01.1986, and overlooking the correct channel of reporting adopted in 2012-13, his APAR for 2013-14 was first wrongly written by Shri R.S. Shukla, the then Dy. Director (Admn.) of AIIMS as the Reporting Officer, and it was then sent to the Director, AIIMS, only for the purpose of Review, who reviewed the APAR on 10.05.2014, whereafter it was accepted by the then Hon'ble Union Minister of Health & Family Welfare and President of AIIMS on 16.05.2014, the date the results of the Lok Sabha Elections were coming in.

104. To our mind, this APAR of the applicant for the year 2013-14 itself was not in order, as, in the process of completion of this APAR,

the second scenario of the O.M. dated 21.08.1986 (supra), where the Vigilance Work forms only a small part of the work of the CVO, and the Officer had been mostly engaged on other items of work had been followed, which could not have been followed, as per the applicant's own assertions and admissions, that his major work during that period was that of the CVO, AIIMS, which he was performing in an outstanding manner, as claimed by him. However, having made this observation that the APAR for the year 2013-14 was not filled up in a legal and proper manner, since it has now become final, and it did relate to one of the two scenarios prescribed in the OM dated 21.08.1986 (supra), and its validity is not in challenge before us, we refrain from declaring it as *non* est in the eyes of law, or interfering with it in any manner. However, we note with regret that neither of the two APARs of the applicant, for the years 2012-13 and 2013-14, were sent to the CVC's Office, for the CVC to record his own assessment also.

105. Coming to the applicant's APAR for the year 2014-15, with which we are concerned, it is clear that strictly applying the first scenario of the DoP&T OM dated 21.08.1986 (supra), till 14.08.2014 it was only the Director AIIMS, Dr. M.C. Misra, who could have been, and was the Reporting Authority of the applicant, and only thereafter, from 15.08.2014 onwards, when the charge of CVO was taken away from the applicant, the Deputy Director (Admn.) of

AIIMS could have performed the function of the Reporting Authority of the applicant.

106. Therefore, to our mind, the APAR of the applicant for the year 2014-15 has first to be seen from the point of view of the division of the whole year's time period into two portions, firstly from 01.04.2014 to 14.08.2014, when he was holding charge as CVO, and his APAR had to be initiated only and only by the Director, AIIMS, as the Reporting Authority, under the above cited OM dated 21.08.1986, and nobody else. The second period in that year was from 15.08.2014 to 31.03.2015, for deciphering the break up of which, and determining the applicant's Reporting, Reviewing, and Accepting Authorities for the appropriate broken periods, we have to resort to the OMS dated 20.05.1972 (supra) read with D.P.&A.R. OM dated 30.01.1978 (supra) read with D.G. P&T letter dated 21.01.1983 (supra) for borrowing the principles enshrined in that for the P&T Employees, which can be adopted *mutatis mutandis* for all other Central Govt. and AIS Officers and employees.

107. We, therefore, hold that in respect of the year 2014-15, applicant's APAR for the period from 01.04.2014 to 14.08.2014 could have been, and shall have to be initiated as the Reporting Officer by the Director, AIIMS only, and nobody else. That report

would have to be commented upon by the CVC, whether any Accepting Authority is there or not.

108. During the later period, from 15.08.2014 onwards, when the applicant was no longer In-charge of the functions of CVO at all, the Dy. Director (AIIMS) became his only Reporting Authority, and the relevant broken periods for reporting during the remaining period of 2014-15 shall have to be determined in accordance with the above cited OMs and instructions regarding the frequency of reporting and the superior officers' eligibility to write a APAR, depending upon transfers in the middle of the reporting year, as well as the requirement of the comments in the APAR to be written ordinarily within one month of the expiry of report period.

109. From the pleadings it is clear that from 15.08.2014 onwards, Shri K.C. Samaria, who was the then Dy. Director (Admn.), AIIMS, for the period from 16.07.2014 to 16.12.2014 could have been the applicant's Reporting Officer, for the period from 15.08.2014 to 16.12.2014, and after his transfer, from 17.12.2014 onwards his successor Dy. Director (Admn.), Shri V. Srinivas, could have been the Reporting Officer of the applicant, but for the fact of the applicant applying for E.L. etc., and that broken period getting reduced to less than 90 days. For the period from 15.08.2014 onwards, till 31.03.2015, the incumbent Director, AIIMS, would be

the Reviewing Authority, and the Hon'ble Union Minister of Health & Family Welfare concerned, would be the Accepting Authority, as the President of AIIMS, at least from 05.12.2014 onwards, as per the procedure prescribed in this regard.

110. Therefore, both the impugned letter dated 28.05.2015 and Memorandum dated 29.05.2015, by which the Respondent No.3 has overlooked the period of 01.04.2014 to 14.08.2014 of the applicant's functioning as CVO to be on an entirely separate footing, much different than the period from 15.08.2014 to 31.03.2015, are erroneous as per the Rules and Regulations cited by us above. The applicant's APAR for the year 2014-15 shall have to be, therefore, written in at least two broken periods, the first being from 01.04.2014 to 14.08.2014, as the C.V.O. We shall soon revert to the possible broken periods in respect of the period from 15.08.2014 to 31.03.2015.

111. Sub Rule-5 (2) of the AIS (APAR) Rules, 2007, states as follows:-

-> Subject to the provisions of sub-rule (4),
-> a performance appraisal report shall also be written
-> when
-> either the reporting or reviewing authority
-> or the member of the Service reported upon
-> relinquishes charge of the post
-> and in such a case,
-> it shall be written at the time of the relinquishment

-> or
-> ordinarily within one month of such relinquishment.

112. Therefore, it is clear that the following events alone can give rise to a broken period APAR under the AIS (APAR) Rules, 2007:-

(a) Ordinarily within one month of:-

(i) Either the Reporting Authority;
(ii) Or the Reviewing Authority;
(iii) Or the member of the Service reported upon;
-> relinquishing the charge of the post held by him,

(b) But, under Sub-Rule 5(4), where the Reporting Authority has not seen, but the Reviewing Authority has seen the performance for at least three months during the period for which the PAR is to be written, the Reviewing Authority shall write the PAR for **any such period**;

(c) But (this prescription shall be) subject to Sub-Rule 5(6),

(d) But under Sub-Rule 5(5), in the absence of competent Reporting or Reporting Authorities, the Accepting Authority shall write the PAR for **any such period**.

(i) When the Reporting Authority;
(ii) Or the Reviewing Authority;
(iii) Or the Accepting Authority;

-> have not seen the performance...for at least three months during the period for which the report is to be written,
(iv) the Government shall make an entry to that effect in the P.A.R. for **any such period.**

113. Thus, in the case of A.I.S. (APAR) Rules, 2007, an extra bit of importance has been laid upon the functions of, and the role of **"seeing the performance of a member of the service**" by the Accepting Authority also, though a change of the incumbent

Accepting Authority does not give rise to a broken reporting period under Sub-Rule 5(2) of the Rules.

114. Also, it is clear from a combined reading of Sub-Rule 5(2), 5(3), 5(4), with Sub-Rule 5 (5), that broken period APARs can be written in any of the following scenarios, but each such broken period needs to be more than 90 days:-

Sl. No.	Sub-Rule	Reporting Authority has seen performance for more than 90 days in the particular period	Reviewing Authority has seen performance for more than 90 days in the particular period	Accepting Authority has seen performance for more than 90 days in the particular period
1.	5(2)	Available, and competent to write	Available, and competent to review	Available, and competent to accept
2.	5(2)	Available, and competent to write	Available, and competent to review	Not available - No acceptance entry
3.	5(2)	Available, and competent to write	Not available – No review entry	Available, and competent to accept
4.	5(2)	Available, and competent to write	Not available – No review entry	Not available – No acceptance entry
5.	5(4)	Not available – No report entry	Available, and competent to act as Reporting Authority	Available, and competent to accept
6.	5(4)	Not available – No report entry	Available, and competent to act as Reporting Authority	Not available – No acceptance entry
7.	5(5)	Not available-No report entry	Not available-No report entry	Available, and becomes the Reporting Authority

115. Thus, according to the above cited Rules, every broken period to be reported upon necessarily has to be more than 90 days. A

broken period APAR can be written for any period of more than 90 days, so long as at least one immediate superior authority, either the Reporting Authority, or the Reviewing Authority, or the Accepting Authority, is available, with requisite experience in respect of that period, who has seen the performance of the Government servant reported upon for more than 90 days in that broken period sought to be reported upon. Thus, there can be at least three broken period APARs in a given year, so long as either a competent Reporting Authority, or a competent Reviewing Authority, or a competent Accepting Authority is available, the word "competent" qualifying the Authority concerned having seen the performance of the member of the Service report upon for more than three months during the period concerned. The under-current of these Rules is that, as far as possible, no broken period in a year should escape from being reported upon.

116. In the case of the applicant for the broken period from 17.12.2014 to 31.03.2015 to be ensured to be reported upon, what is relevant is that there was a competent Reviewing Authority, the Director, AIIMS, who had actually seen his work for the whole year, including for the period from 01.04.2014 to 14.08.2014 as the Reporting Officer, and from 15.08.2014 to 31.03.2015 as the Reviewing Officer. Therefore, the prescription under the DoP&T OM

dated 23.09.1985 (supra) reproduced in Para-92/above, and Sub-Rule 5(4) of APAR Rules, 2007, would apply in this case, and since the Director, AIIMS was the competent authority to record his comments as the Reviewing Officer for this entire period, in order for the period from 17.12.2014 to 31.03.2015 also to be covered, the Sub-Rule 5(4) can prevail over Sub-Rule 5(2), and the Director, AIIMS, can write the applicant's APAR as the Reporting Authority. What is important under the Rules is the availability and the competence of the Reporting/Reviewing Authority, as a person who has supervised the work of the Officer being reported upon for more than 90 days, which is determined by the period of such supervision being at least 90 days.

117. Further, in respect of the period from 15.08.2014 to 31.03.2015, the new incumbent Minister of Health & Family Welfare had been notified as President of AIIMS through the Notification dated 05.12.2014. The previous incumbent became ineligible to act as the applicant's Accepting Authority after that date, because even one month's grace period is not admissible under Sub-Rule 5(2) in respect of Accepting Authority. Therefore, he oversaw the work of the applicant for 27 days in December, 2014, from 05.12.2014 to 31.12.2014, for 31 days in January, 2015, for 28 days in February, 2015, and for 31 days in March 2015, the total of which comes to

117 days. Even after deducting the period of 7 days' Commuted Leave + 21 days' Earned Leave, 28 days' Leave availed by the applicant in the month of March, 2015, out of 117 days, the time period for which the new incumbent Minister of Health & Family Welfare and President, AIIMS, oversaw the work of the applicant was less than 90 days from the period 05.12.2014 onwards till 31.03.2015. So, he does not become a competent Reviewing Authority. As a result, all the broken period APARs of the applicant for 2014-15 would have to go without their having been accepted by a competent Accepting Authority.

118. Therefore, the prayer of the applicant at Para 8(a) cannot be granted because during the relevant period he had worked as CVO, and, therefore, the broken period APAR for the period from 01.04.2014 to 15.07.2014 could not have been initiated by the Dy. Director (Admn.), and the report presently claimed by the applicant to have become final is actually *non est* in the eyes of law. Further, the prayer of the applicant at Para-8(b) also cannot be granted since the so-called broken period APAR report for that period is *non*-est in the eyes of law, and the comments of Shri K.C. Samaria in respect of the period from 16.07.2014 to 16.12.2014 were recorded after a delay of nearly 5 months, in December 2014, and not within the prescribed grace period of one month after his being relieved from

AIIMS. Further, the previous incumbent Accepting Authority became *functus officio* at least from 05.12.2014. Thirdly, the prayer of the applicant at Para-8 (c) to direct the respondents to issue a no report certificate in respect of the broken period from 16.12.2014 to 31.03.2015 also cannot be granted in view of the fact that under the DoP&T OM dated 23.09.1985 (supra), read with Sub-Rule 5(4) of the AIS (APAR) Rules, 2007, the applicant's Reviewing Authority Director AIIMS having overseen his work for the entire period from 15.08.2014 to 31.03.2015, he can still be the Reporting Authority, as being competent to write the broken period APAR, with the only rider that there would be no reviewing comments in Portion-IV of this broken period APAR. However, as we have discussed above, neither the previous incumbent, nor the new incumbent Minister of Health & Family Welfare and President AIIMS, would be competent to act as Accepting Authority in respect of any of the broken period APARs of the applicant during the financial year 2014-15. Therefore, it is clear that the three prayers of the applicant, as made out in this OA, cannot be allowed in the manner as has been prayed.

119. However, we have to also determine the maintainability of the present OA before us in terms of equity and settled propositions of law.

120. It is trite law that correct and lawful ends cannot be tried to be achieved by incorrect, or unfair, or unlawful means, and that the correct ends do not justify unfair means being adopted to achieve them.

121. The Latin Maxim of *bona gestura,* meaning good behaviour, applies to the expectation of good behaviour on the part of all the parties to a litigation before a Court or a Tribunal. We do not find that the applicant of this OA qualifies to have come before us *bona gestura*.

122. The applicant has submitted that he had filed one OA before the Chandigarh Bench of this Tribunal, and four other OAs before this Principal Bench of the Tribunal, and that he had succeeded in his OA before the Chandigarh Bench of the Tribunal, and has succeeded in three other OAs before the Principal Bench of the Tribunal, and one more of his OAs is still pending adjudication, before another Bench. Though some of his earlier OAs have been allowed on their own respective merits, but at least in this OA before us, we cannot part without examining the legality or illegality of the manner in which he has submitted his case before us.

123. The applicant is an Indian Forest Officer of 2002 Batch, who has put in more than 12 years of service in one of the premier All India Services, and the applicant cannot therefore claim *doli incapax,* and cannot claim that he is incapable of guilt, which plea is available only to the very young, and to the persons having an unsound mind, who cannot form the intent to commit a crime, or a *mens rea.*

124. We find that in filing this OA, the applicant has relied upon and enclosed along with the OA, and along with his rejoinder numerous documents, of which he was not the authorized recipient, and which he cannot in any manner claim to have had access to in an authorized manner. Therefore, any relief which may be granted by this Tribunal to the applicant can only be *ex delicto*, and the applicant has to face the consequences of his numerous transgressions in having unauthorisedly obtained, or acquired the custody of, or stolen, certain documents, including some from the files he saw in his official capacity as CVO of AIIMS, and produce them in his OA, which is at least a tort, if not a crime.

125. *Ex delicto* means from a delict, tort, fault, crime or malfeasance. The applicant cannot escape the consequences arising from the ancient maxim *Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hsec cartasve consignaverit,* which means

that when a man illicitly and without authority for that purpose, signs, writes or charters with the King's seal, which he has either found or stolen, he cannot escape the liability of maxim *Crimen omnia es se nata vitiat,* which means that a crime vitiates all things proceedings from it. In his capacity as the CVO, AIIMS, the applicant must have been privy to a lot of confidential information, and files, which he had to deal with in the process of submitting them to the Head of the Department, Director AIIMS, and then later taking follow up action in regard to those. But that passing of those files to and from his table did not give him the liberty to keep photocopies of documents from those files, and to use them as Annexures in his OA, as he has done in this case in the case of many Annexures. On this aspect, we may reproduce the comments of the learned Authors M.P. Jain & S.N. Jain, in "Principles of Administrative Law", 7th Edition, 2011, Edited by Dr. Shakil Ahmad Khan & Others, in which, at page 2844, under the heading "Chapter XLVII: Right to Information: SYN. 3(b) Secrecy in Government of India: Government Practice", it has been stated by the learned commentators as follows:-

"(b) **Secrecy in Government of India: Government Practice**

> The normal rule in the Government of India is secrecy, and openness is an exception. Government papers and documents are divided into two categories, namely, "non-classified" and "classified". Greater secrecy is to be observed in the case of the

latter. The classified documents are divided into four categories, namely, "top secret", "secret", "confidential", and "personal – not for publication". The "top secret" grading is given to information of a vital nature affecting national security such as military secrets, matters of high international policy, intelligence reports, etc. The "secret" marking is given to papers of information which is likely to endanger national security or cause injury to the interests or prestige of the nation or would cause serious embarrassment to the government either within the country or in its relations with foreign nations. The word "confidential" pertains to information whose disclosure would be prejudicial to the interest of the nation or given advantage to a foreign nation or even cause administrative embarrassment. "Personal – not for publication" is meant for cases where the information is fit for communication to the individual members of the public, but it is desired that the information given to an individual is not meant for publication. These are arbitrary divisions without having any legal sanction. What is marked, and how it is marked, are matters within the prerogative of the government. It is also not clear whether there is any procedure to reconsider the classification of documents. So, the initial classification lingers on long after the document has ceased to be important.

As regards "non-classified" papers, the rule is that no official is to communicate any information to anyone which has come into his possession in the course of his official duties, unless so authorised by general or special orders. Similarly, note portions of a file referred by one department to another are to be treated as confidential.

A government servant under the civil service rules is under an obligation not to disclose to anyone including a fellow government servant any information acquired by him during the course of his official duties. This is provided by Rule 8 of the Central Civil Service (Conduct) Rules, 1955. A violation of this rule will subject the civil servant to discipline action, apart from punishment under any other law, e.g., the Official Secrets Act, 1923".

(Emphasis supplied).

126. The applicant before this Tribunal could have only produced those documents as Annexures to his OA or rejoinder etc. and other pleadings, which documents are *bonafide* in his possession. It need not be repeated by us here that *bonafide* means in good faith, without fraud or deception, honestly, as distinguished from bad

faith, openly, sincerely, without any fraud or deceit. English Courts have attributed honesty as an equipment of *bona fide.*

127. Also, since there is no such concept as constructive *mala fide*, it has been held by the Madras High Court in **Watrap S. Subramania Aiyar v. The United India Life Insurance Co., Ltd.**, **55 Mad LJ 385 at p. 412 = (AIR 1928 Mad 1215)** that no distinction can be made between the *bona fide* in fact or *bona fide* in law. Therefore, if the applicant could not have been, and is not a *bona fide* possessor of a document in fact, he cannot become its *bona fide* possessor in law, to be able to include it in his pleadings before this Tribunal.

128. As was held by the Punjab & Haryana High Court in **Subhadran Devi And Ors. vs Sunder Dass Tek Chand And Anr. AIR 1965 Punjab 188,** the word *bona fide* means in good faith or genuinely; in other words it conveys absence of intent to deceive, which we find to be missing from the pleadings of the applicant in the present OA.

129. In the case of **United Dominions Trust Ltd. Vs. Kirkwood (1965) 2 All E.R. 992,** it was held that in considering whether a person was acting *bona fide* or not, the motive was irrelevant. Therefore, even if the applicant of this OA can still lay a claim to be

paragon of all virtues, and an epitome of honesty, and a whistle blower, as the Newspaper Report Annexed by him has termed him to be, and has claimed to be really deserving of the prestigious Ramon Magsaysay Award conferred upon him, and he claims that in whatever he has done, his motive has always been to expose corruption, but that motive is irrelevant, if his actions in achieving that motive, through the pleadings filed before us are not *bona fide.*

130. As per Bramwell L.J., in the case of **R. Vs. Holl TQBD 575,** the correct province of the phrase *bona fide* is, therefore, to qualify things or actions that have relation to the mind, or motive of the individual. From the type of documents illegally and unauthorisedly obtained, procured & accessed by the applicant, and then filed as Annexures along with his O.A. and pleadings, including the documents Annexed in breach of Parliamentary Privilege, we do not find that the mind or the motive of the applicant has ever been to act honestly, or in a *bona fide* manner.

131. It is also not as if the applicant has mistakenly Annexed those documents. It was held in **Nistarini Dassya vs. Sarat Ch. Majumdar, 29 IC 689** that where a mistake is honestly made, it is a *bona fide* mistake. However, we do not find that the production of such unauthorisedly obtained and stolen documents, filed even in

breach of the Privilege of the Parliament, can come in the category of a *bona fide* mistake, when the applicant was not a *bona fide* possessor of those documents.

132. The maxim *crime nomania* means that a crime vitiates all proceedings from it, the very act of the applicant in having kept copies or photocopies of documents from the files which passed through his hands as the CVO, to be produced as Annexures in the present OA, shows that he has committed a crime, in unauthorizedly keeping copies of such documents and file notings, in a manner which can only be termed *ex delicto* (supra).

133. The maxim *Ex turpi causa non oritur action* lays down the principle that from a dishonourable cause, an action does not arise. Here, in this case the applicant has only been trying to always act against the Rules. He supplied copies of his Self Appraisal Reports for broken periods of the relevant calendar year for getting his broken period APAR written from Officers, who were, firstly, not qualified to write the APAR report, till the period of 14.08.2014, when he was CVO, AIIMS, and also, subsequently, from those who had long back left the post concerned, and more than the one month's prescribed grace period had passed. He can, therefore, only be held to be acting in furtherance of a dishonourable cause, from

which no cause of action can arise, and makes his OA liable to be dismissed on that ground alone also.

134. In the case of **Hazi Abdul Shakoor vs. The Rent Control and Eviction Officer AIR 1959 Allahabad 440,** it was held that a petitioner who comes before the Court founding his cause of action on an illegality, will not get any assistance from the Court. In **Satyanarayana vs. Appa Rao, AIR 1966 AP 209,** and in **Babulal Swaruphand Shah vs. South Satara (Fixed Delivery) Merchants' Association Ltd., AIR 1960 Bom 548,** it was held that no right of action arises from an immoral or illegal cause. In the case of **Chettiar vs. Chettiar (1962) 1 All E.R. 494,** the Privy Council had held that no Court will lend its aid to a man who founds his cause of action upon an immoral or illegal act, applying the maxim of e*x turpi causa non oritur actio.* Bowing before the law as laid down in the above cases by Allahabad High Court, and by Andhra Pradesh High Court, and by the Privy Council, since the applicant has come before us founding his action upon illegally and unauthorisedly obtained and stolen documents, he cannot plead before this Tribunal to lend its aid to him, in spite of his numerous and repeated self proclamations of honesty and integrity in performance of his assigned duties.

135. The applicant may be honest in so far as monetary terms is concerned, and may have never touched even a rupee in an illegal manner in his official career, and may even be right in claiming to have maintained honesty and integrity in so far as raising issues concerning corruption, and trying to bring out skeltons in the cupboards of the Respondent-Institute AIIMS are concerned. But that aspect of his honesty or integrity cannot absolve him of his lack of honesty and integrity in dealing with the papers and documents on which he has been able to lay a hand.

136. In this context two Latin Maxims come to our mind, which are "*fiat justitia et pereat mundus"* and *" fiat justitia ruat caelum".* The first of these is stated to be from a speech of Ferdinand I, Holy Roman Emperor, who had declared that "let there be justice, though the word perish". The second Latin Maxim means that "let justice be done, though the heavens fall", or that "justice must be done, regardless of the result otherwise". We find that in the instant case before us, justice can only be done if we take full cognizance of the illegal or unauthorized manner in which the applicant has not only obtained documents, to which he had no authorized access, but has even produced them as Annexures before this Tribunal, and he has not even bothered about the Parliamentary Privileges, in filing a copy of a draft Report of a Parliamentary Standing Committee, while

the Parliamentary Standing Committee's Report can only become public after it has been finalised, and the final version has been placed on the table of the House concerned. The applicant has not even thought twice about somehow acquiring and citing the internal and confidential correspondence between the Chairman of a Parliamentary Standing Committee, and the Minister concerned, and the confidential exchange of correspondence between the Prime Minister's Office and the other Offices, and, therefore, we cannot in any manner hold that the applicant is entitled to any relief from this Tribunal, or any mercy from this Tribunal in respect of his wrongful acts.

137. Being an All India Services Officer of more than 12 years of working seniority, it is not as if the applicant can claim *doli incapax,* as we have discussed above, and he is fully covered under the doctrine of *doli capax*, and he is fully capable of committing these crimes, which he has committed, when, as a senior AIS Officer he was having sufficient knowledge or understanding to distinguish between what is right or what is wrong. Yet, he had gone about acquiring documents concerning him from all types of sources, in an illegal or wrongful manner, and has even had the temerity to produce them as Annexures in his OA before us.

138. We, in this Tribunal, are not here to calculate and try to balance the applicant's acts of monetary honesty *vis-a-vis* his acts of professional dishonesty. Under the maxim of *iudex non calculat,* or *judex non calculate,* it has been the law that the Judge does not calculate, but only weighs all the evidence. Here, the weight of the wrongful and illegal acts of the applicant, done with specific intent, or *dolus specialis,* of somehow trying to prove his case, weighs much more heavily beyond all his claims of individual honesty in so far as monetary terms are concerned.

139. Production of unauthorisedly acquired documents and papers stolen from the files, only can classify under the Latin Maxim *malum in se*, which means wrong in itself, or something which is considered a universal wrong or evil, regardless of the system of laws in effect, as well as *malum prohibitum* which means a prohibited wrong, something which is wrong or illegal by virtue of it being expressly prohibited, like in the case of production of the draft proceedings of the Parliamentary Standing Committee, which the applicant has produced in the present OA as an Annexure.

140. The applicant was fully bound by the tenets of law as have been laid down by the maxim *non facias malum ut inde veniat bonum,* which means "not to do evil that good may come", meaning

thereby that performing some illegal action is not excused by the fact that a positive result may come therefrom. This Tribunal actually has to invoke the maxim *nemo auditur propriam turpitudinem allegans,* which means that no one can be heard, who invokes his own guilt, and nobody can bring a case that stems from his own illegal actions.

141. The Hon'ble Delhi High Court has recently pronounced a very thorough and comprehensive judgment regarding the aspects of frivolous litigation, speaking through Hon'ble Mr. Justice J.R. Midha in RFA No, 784/2010 dated 22.01.2016 **H.S. Bedi vs. National Highway Authority of India.** This judgment is a very thorough compilation of the case law, which has emanated from British Courts, Singapore Courts and Indian High Courts, and Supreme Court of India, on various facets of litigation, some of which comments are relevant in the instant case, which we may reproduce.

> "1. In **Subrata Roy Sahara v. Union of India,** (2014) 8 SCC 470, J.S. Khehar, J. observed that the Indian judicial system is grossly afflicted with frivolous litigation and ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. The Supreme Court, discussed the menace of frivolous litigation. Relevant portions of the said judgment are as under:
>
> **"191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims.**

One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?...

xxx xxx xxx

194. Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. ..."

2. The greatest challenge before the judiciary today is the frivolous litigation. The judicial system in the country is choked with false claims and such litigants are consuming Courts' time for a wrong cause. False claims are a huge strain on the judicial system. Perjury has become a way of life in the Courts. False pleas are often taken and forged documents are filed indiscriminately in the Courts. The reluctance of the Courts to order prosecution encourage the litigants to make false averments in pleadings before the Court. Section 209 of the Indian Penal Code, which provides an effective mechanism to curb the menace of frivolous litigation, has been seldom invoked.

3. An important question of law of public interest relating to the scope of Section 209 of Indian Penal Code has arisen for consideration before this Court. Section 209 of the Indian Penal Code provides that dishonestly making a false claim in a Court is an offence punishable with punishment of imprisonment upto two years and fine. Section 209 of the Indian Penal Code is reproduced hereunder: -

> **"Section 209 - Dishonestly making false claim in Court — Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."**

142. In Para 5.3 of this judgment, the Hon'ble High Court further went ahead to cite from the report of the Indian Law Commission

dated 14.10.1837, which had been tasked with the drafting of the Indian Penal Code, as follows:-

> "……**If there be any place where truth ought to be held in peculiar honour, from which falsehood ought to be driven with peculiar severity, in which exaggerations, which elsewhere would be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is Court of Justice.** We object therefore to the use of legal fictions even when the meaning of those fictions is generally understood, and we have done our best to exclude them from this Code. **But that person should come before Court, should tell that Court premeditated and circumstantial lies for the purpose of preventing or postponing the settlement of just demand, and that by so doing he should incur no punishment whatever, seems to us to be state of things to which nothing but habit could reconcile wise and honest men. Public opinion is vitiated by the vicious state of the law. Men who, in any other circumstances, would shrink from falsehood, have no scruple about setting up false pleas against just demands. There is one place, and only one, where deliberate untruths, told with the intent to injure, are not considered as discreditable and that place is Court of Justice.** Thus the authority of the tribunals operates to lower the standard of morality, and to diminish the esteem in which veracity is held and the very place which ought to be kept sacred from misrepresentations such as would elsewhere be venial, becomes the only place where it is considered as idle scrupulosity to shrink from deliberate falsehood.
>
> **We consider law for punishing false pleading as indispensably necessary to the expeditious and satisfactory RFA 784/2010 Page 10 of 99 administration of justice, and we trust that the passing of such law will speedily follow the appearance of the Code of procedure.** We do not, as we have stated, at present propose such law, because, while the system of pleading remains unaltered in the Courts of this country, and particularly in the Courts established by royal charter, it will be difficult, or to speak more properly, impossible to enforce such law. **We have, therefore, gone no further than to provide punishment for the frivolous and vexatious instituting of civil suits, practice which, even while the existing systems of procedure remain unaltered, may, without any inconvenience, be made an offence.** The law on the subject of false evidence will, as it appears to us, render unnecessary any law for punishing the frivolous and vexatious preferring of criminal charges."

(Emphasis supplied)

143. The Delhi High Court has further gone on to cite from its earlier judgment in the case of **Sanjeev Kumar Mittal v. State, 174 (2010) DLT 214,** and in Para 8.1 of the judgment, the following paragraphs of that previous judgment have been cited:-

> "6.13. A party, whether he is a petitioner or a respondent, or a witness, has to respect the solemnity of the proceedings in the court and he cannot play with the courts and pollute the stream of justice. It is cases like this, with false claims (or false defences) which load the courts, cause delays, consume judicial time and bring a bad name to the judicial system. This case is a sample where the facts are glaring. Even if they were not so glaring, once falsehood is apparent, to not take action would be improper.
>
> 6.14. The judicial system has a right and a duty to protect itself from such conduct by the litigants and to ensure that where such conduct has taken place, the matter is investigated and reaches its logical conclusion and depending on the finding which is returned in such proceedings, appropriate punishment is meted out.
>
> 6.16. In an effort to redeem the situation, not only realistic costs and full compensation in favour of the winning party against the wrongdoer are required, but, depending on the gravity of the wrong, penal action against the wrongdoers is also called for. **Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens.** Litigation caused by false claims and defences will come to be placed before the courts, load the dockets and delay delivery of justice to those who are genuinely in need of it".

144. Further, in Para-10, the Hon'ble High Court has reproduced the following portions of that previous judgment also:-

> "10.1. xxxxxxxxx (Not reproduced here).
>
> 10.2. A common thread that can be culled out from these decisions is that **perjury, which includes false averments in pleadings, is an evil to eradicate which every effort must be made. The reluctance of the courts to order prosecution RFA 784/2010 Page 26 of 99 encourage parties to make false averments in pleadings before the Court and produce forged documents.**
>
> xxx xxx xxx

> 10.4 The gravity of the offence, the substantiality of the offenders, the calculated manner in which the offence appears to have been committed and pernicious influence such conduct will have in the working of the Courts and the very faith of the common man in Courts and the system of the administration of justice, all have been reckoned in arriving at a conclusion that action under Section 340 is fully justified".
>
> (Emphasis supplied)

145. In Para 9.5 of this judgment, the High Court cited from the case in **Bachoo Mohan Singh v. Public Prosecutor (2010) SGCA 25,** a judgment delivered by the Singapore Supreme Court, in Para 55 of which the report of Indian Law Commission had been reproduced, and discussed as follows:-

> "55. It follows that s 209 of the PC was clearly **intended to deter the abuse of court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy. The essence of this provision is entirely consistent with the desire of the Indian Law Commissioners to preserve the special standing of a court of justice and safeguard the due administration of law by deterring the deliberate making of false claims in formal court documents.** I should perhaps round up this discussion on the objectives of s 209 of the PC by pointing out that in India it is the court and not the Public Prosecutor who initiates prosecutions under the equivalent provision. At the end of the day, it can be said with some force that **it is the court that is best positioned to assess when its processes have been misused or abused. The court is also wellequipped to deal with litigants and/or solicitors who abuse its processes through a variety of well established judicial remedies including adverse personal costs orders and/or contempt proceedings.** In the case of advocates and solicitors, disciplinary proceedings will swiftly follow serious infractions of professional responsibilities. This may explain why **other common law jurisdictions have not seen a compelling need to criminalise abuses of the pleading process".**
>
> (Emphasis supplied)

146. In Para 10.2 of its judgment, Hon'ble High Court has pointed out that in **S.P. Chengalvaraya Naida (dead) by LRs v. Jagannath,**

AIR 1994 SC 853, the Supreme Court had held that a person, whose case is based on falsehood, has no right to approach the Court, and he can be thrown out at any stage of litigation, by stating as follows:-

> **"7. ...The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, taxevaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".**

147. In Para 10.4 of its judgment, the Delhi High Court has cited the Supreme Court's observations in the case of **Dalip Singh v. State of U.P. (2010) 2 SCC 114,** in which the Supreme Court had stated as follows:-

> **"2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final." .**
>
> (Emphasis supplied)

148. In Para 10.5, the Delhi High Court has cited the case of **Ramrameshwari Devi v. Nirmala Devi (2011) 8 SCC 249,** and has

reproduced Para 52C of the Supreme Court's judgment, in which the Supreme Court had stated as follows:-

> **"52C. ...In appropriate cases the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."**
>
> (Emphasis supplied)

149. In Para 10.7 of the judgment, the Hon'ble Delhi high Court has cited from the Supreme Court judgment in **Kishore Samrite v. State of U.P. & Ors., (2013) 2 SCC 398,** and has reproduced Para 32.1, 32.3, 32.5, 36,37,38 & 39, among other paragraphs of that judgment, as follows:-

> **"32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.**
>
> **32.2. xxxxxxxxxx(Not reproduced here)**
>
> **32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.**
>
> **32.4xxxxxxxxx(Not reproduced here)**
>
> **32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final....."**
>
> 36. The party not approaching the court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. **While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to an abuse of process of court and such a litigant is not**

required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to an abuse of process of court. A litigant is bound to make "full and true disclosure of facts".....

37. **The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for courts. Wide jurisdiction of the court should not become a source of abuse of process of law by the disgruntled litigant.** Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the court knows law, but not facts. **One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands.** Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court.....

39. **Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions......"**

(Emphasis supplied)

150. In Para 10.9 of its judgment, the Hon'ble Delhi High Court has cited from its earlier judgment in the case of **Satyender Singh v. Gulab Singh, 2012 (129) DRJ 128,** in which the Supreme Court's judgment in the case of **Dalip Singh v. State of U.P.** (supra), had been followed, and the High Court had observed as follows:-

> "2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. **In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.** Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."
>
> (Emphasis supplied)

151. In Para 10.10 of its judgment, the Hon'ble Delhi High Court cited from its earlier judgment in **Padmawati v. Harijan Sewak Sangh, 154 (2008) DLT 411,** in which a litigant has perpetuated illegalities, which had been commented upon as follows:-

> "6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial RFA 784/2010 Page 69 of 99 system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.
>
> xxx xxx xxx
>
> 9. Before parting with this case, I consider it necessary to pen down that **one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from**

> **the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs.** Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."
>
> (Emphasis supplied)

152. In Para 10.11 of its judgment, the Delhi High Court has cited from the Karnataka High Court judgment in **A. Hiriyanna Gowda v. State of Karnataka, 1998 Cri. L.J. 4756,** and has produced, among others, the Paragraphs 2 & 3 of that judgment as follows:-

> "2. It has unfortunately become common place for the pleadings to be taken very lightly and for nothing but false and incorrect statements to be made in the course of judicial proceedings, for fabricated documents to be produced and even in cases where this comes to the light of the Court the party seems to get away because the Courts do not take necessary counter-action.
>
> **3. The disastrous result of such leniency or indulgence is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result. To my mind, therefore, the fact that the petitioner has pressed in this application requires to be commended because it is a matter of propriety and it is very necessary at least in a few glaring cases that an example be made of persons who are indulging in such malpractices which undermine the very administration of justice dispensation system and the working of the Courts. This will at least have a deterrent effect on others.**

153. In Para 11.15 of that judgment the Delhi High Court has again cited from the Supreme Court judgment in **Kishore Samrite v. State of U.P. & Ors.** (supra), and has reproduced Paragraphs 34 & 35 of that Supreme Court judgment including the following portion:-

> "34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.
>
> 35.....**The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty** and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. **One way to curb this tendency is to impose realistic or punitive costs.**"
>
> (Emphasis supplied)

154. Under the weight of the case law as cited by the Hon'ble Delhi High Court in its judgment dated 22.01.2016, it appears that the applicant before us can even be held liable to be prosecuted u/s 209 of the Indian Penal Code, because in the garb of the protection available to him in making his pleadings before this Tribunal, he has made numerous statements, which, if made outside of this Tribunal's proceedings, would have even rendered him liable to be sued and punished for civil defamation and criminal defamation. Those averments are certainly in the nature of statements made in order to annoy the incumbents of the posts of Respondent No.2 and Respondent No.3, and to try to derive undue sympathy from this

Tribunal, to which the applicant before us does not seem to be entitled to at all. However, we desist from holding that the applicant ought to be prosecuted under that provision.

155. When the decision as to in which manner the reporting year of 2014-15 has to be treated was to be taken by his superiors, and the law was laid down by the AIS (APAR) Rules, and the various Circulars and OMs cited and reproduced by us above, by which, for the period at least till 14.08.2014, when he was CVO of AIIMS, only his Head of Department, Director AIIMS could have been his Reporting Authority, the applicant could not have illegally submitted broken period APAR forms to two of the Dy. Directors (Admn.), and get Part-3 of those APAR forms filled up by them. He cannot now claim relief from this Tribunal because of his own illegal acts in having done so, in breaking up the period of his reporting on his own, in a manner as suited him.

156. Therefore, under the Latin Maxim *probatio vincit praesumptionem,* even though there can be a presumption that the applicant was trying to act in order to control dishonesty and corruption in AIIMS, where skeletons were tumbling out of its cupboards, but the proof that he himself has indulged in illegal acts in furtherance of his personal interest overcomes the above presumption. It is not as if the applicant has done all this collection

of documents in an illegal or unauthorized manner unknowingly. He has done so very much knowingly, with full awareness, and being a senior Class-I Government Officer of a premier All India Services, who has since been promoted also, and has had a change of Cadre also been granted as per his own wish, he cannot be allowed to state that he was not aware of the offences or torts, which he was committing *scienter,* or knowingly.

157. The Latin Maxim of *volenti non fit injuria* means that the injury is done to the willing, and deals with the notion that a person cannot bring a claim against another for injury, if the said person willingly placed himself in a situation where he knew injury could result. In the instant case, instead of waiting for the end of the year 2014-15, or even waiting for his superiors to furnish him his APAR forms for broken periods within that yearly period, the applicant went ahead voluntarily submitting his APAR form for those broken periods, as he understood himself to be correct. Therefore, he had willingly placed himself in a situation where he knew that any such action of his could be questioned by the superior appropriate authorities, and he cannot now claim that the respondents have passed the impugned Memorandum and issued the impugned letter in an illegal manner.

158. We may cite the definition of 'misconduct' from the 3rd Edition 2012 of P. Ramanatha Aiyar's 'The Law Lexicon' as follows:-

> "The term 'misconduct' may involve moral turpitude, it must be improper of wrong behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears, forbidden quality or character. **State of Punjab v. Ram Singh, AIR 1992 SC 2188, 219 : (1992) 4 SCC 54 [Constitution of India, Arts. 309, 311 and Punjab Policed Manual, 1935, R. 16. 2(1)".**
>
> "The word 'misconduct' covers any conduct, which is any way, renders a man unfit for his office or is likely to taper or embarrass the administration. **Gulam Mohiuddin v. State of West Bengal, AIR 1964 Cal 503, 515 [West Bengal Government Servants Conduct Rules (1959), R. 4]".**
>
> "The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being, construed "Misconduct" literally means wrong conduct or improper conduct. **[59 Mad 789: 163 IC 493: 9 RM 24: 1936 MWN 594 : 43 LW 938: 1936 Mad 508: 70 MLJ 608."**
>
> "Misconduct literally means wrong or improper conduct i.e. conduct in violation of a definite rule of action. It ordinarily means failure to do what is required of a person to be done. An omission to do what is required of a person to do may therefore constitute misconduct even though the person has not acted wilfully or maliciously. **Shaikh Mohammad v. G.G. In Council, AIR 1954 Nag. 337. [Indian Railways Act (9 of 1890], S. 72].**
>
> Misconduct is something more than mere negligence. It is the intentional doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. **Rasabati Bewa v. Union of India, AIR 1961 Ori 113, 118. [Railways Act (9 of 1890), S. 74-6(3)].**
>
> Misconduct is something more than mere negligence, and it is the intentional doing of something which the doer knows to be wrong or which he does recklessly not carrying what the result may be. Misconduct is something more than mere negligence. It is the intentional doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. **Dominion of India v. Ado Shaw Aklu Shaw, AIR 1957 Pat. 219, 223. [Railways Act (9 of 1890), S. 72]."**

159. The applicant having copied documents from the files which passed through his hands as the CVO, AIIMS, can be classified to have been guilty of at least misfeasance, if not misconduct, which is defined as the improper doing of an act, which a person might lawfully do, a wrongful and injurious exercise of lawful authority, or the doing of the lawful act in an unlawful manner.

160. In the case of Confidential Report earlier, and APAR now, the most important Authority relevant for filling up the concerned form is the Reporting Authority. The Supreme Court had in the case of **R.L. Butail vs. Union of India (1970) 2 SCC 876**, in Para-13 of the judgment emphasized this aspect by stating as follows:-

> "13. These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative' merit when questions of promotion, confirmation, etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the government servant. In such a case the officer making the order has to give :a reasonable opportunity to the government servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated."

161. The same aspect was emphasized by the Supreme Court once again in the case of **S. Ramachandra Raju vs. State of Orissa AIR 1995 SC 111,** when the primary responsibility of the Reporting

Officer had been recognized in that judgment putting the major part of onerous responsibility upon the Reporting Officer only, in Para-11, by stating as follows:-

> "11.....It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to loose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the Government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate employee/ officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honestly with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service."

162. The fact that the Confidential Reports should be written by superior and much higher officers above the similar cadre was emphasized by the Supreme Court in the case of **State Bank of India Etc. vs. Kashinath Kher and Others Etc. AIR 1996 SC 1328= (1996) 8 SCC 762,** and Para-3 of that judgment stated as follows:-

> "3. It would appear that the confidential reports and character rolls are being prepared by the officers of the same rank in the same MMGS-II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. Ms. Nisha is right and the High Court is well justified in holding that such a procedure is violative of the principles of natural justice. Such procedure and practice is obviously pernicious and pregnant with prejudices and manipulative by violating the principles of natural justice and highly unfair. The object of writing confidential report is two fold, i. e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in Delhi Transport Corporation's case (AIR 1991 SC 101) pointed out pitfalls and insidious effects on service due to lack of objectives by the controlling officer. **Confidential and character reports should, therefore, be written by superior officers higher above the cadres.** The officer should show objectively, impartially and fair assessment without any prejudices whatsoever with highest sense of responsibility alone to inculcate devotion to duty. honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. **Therefore, they should be written by superior officer of high rank, who are such high rank officers is for the appellant to decide.** The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."
>
> (Emphasis supplied)

163. Therefore, when the Dy. Director of AIIMS is an officer of almost similar seniority, though from the IAS cadre, and the incumbents of those posts were only very slightly higher in seniority than the applicant, who has under his belt more than 12 years of seniority in the Indian Forest Service, his APARs ought not to have been written by any of the Dy. Director (Admn.) at all, more

so in the case of the period when he was the CVO, when only the Director of AIIMS alone, as the Head of Department, was competent to write the APARs of the applicant, under the relevant OM reproduced above. In this context, the Table submitted in the counter reply of the Respondents, reproduced by us in para 46/above, and their Notification dated 21.08.2015, which has been reproduced by us in para 69/above, need to be looked into afresh by the Respondents.

164. On merits, we have already held that the impugned Memorandum dated 29.05.2015 was correct, but the impugned letter dated 28.05.2015 was incorrect under the Rules, as it had failed to distinguish between CVO's work and Deputy Secretary's work. This observation, and the fact that the APAR of the applicant as CVO from 01.04.2014 to 14.08.2014 could only have been written by the Director, AIIMS, and then commented upon by the C.V.C. also, before it could be even considered for being sent to an Accepting Authority, if still competent and available, would now need to be acted upon by the respondents, which we direct them to adhere to.

165. In view of the preponderance of the principles of law and the case law against the actions of the applicant in regard to the manner in which he has filed this O.A. and put-forth his case in this

OA, the OA is disposed off, with the above mentioned observations and directions. However, there shall be no order as to costs, even though, as per Supreme Court's judgment in **Kishore Samrite** (supra), reproduced in para 153/above, we could have imposed **"realistic or punitive costs".**

(Raj Vir Sharma) ***(Sudhir Kumar)***
Member (J) ***Member (A)***

cc.