Before Rajiv Narain Raina, J.

JASJIT SINGH SAMUNDRI—*Petitioner*

versus

UNION OF INDIA & OTHERS—*Respondents*

CWP No. 979 of 2011

July 04, 2013

Constitution of India, 1950 - Art. 226 - Central Vigilance Commission Act, 2003 - Petitioner, member of Indian Forest Service - Posted as Divisional Forest Officer in 2001 - Certain illegalities and irregularities came to notice of Court - Suo moto notice - CBI directed to constitute Special Investigation Team (SIT) - Petitioner

named in FIR registered by CBI - No culpability of petitioner found - State Government declined request of CBI for grant of sanction of prosecution - Central Vigilance Officer held parallel proceedings - Did not agree with report of CBI - Govt. concluded there was no case for prosecution qua Petitioner - Central Vigilance Commission rejected recommendation of Govt. of India which was sanctioning authority - CVC refused to reconsider the matter citing circular dated 24.4.2008 - CWP filed challenging order of CVC - Allowed - Held, CVC is recommendatory body - Has not been given over-riding power in its relationship with the Central Govt. - Consultative process cannot be seen as giving primacy to CVC to override the power of the appointing authority - Decision of Govt. or CVC is open to judicial review - CVC has usurped jurisdiction which it does not possess under the Act - Instructions in Office Memorendum dated 24.4.2008 are arbitrary, unconstitutional and ultra vires the Central Vigilance Commission Act, 2003 - Office Memorendum quashed - Central Govt. directed to reconsider the matter afresh.

Held, that a reading of the provisions of the Act leave no manner of doubt that the CVC is a recommendatory body but has not been given over riding power in its relationship with the Central Government. Section 17 of the Act requires that if the Central Government does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission. Section 19 of the Act lays down that the Central Government shall, in making rules or regulations governing vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of All-India Services consult the Commission. Consultative process cannot be seen as giving primacy to the CVC to override the power of the appointing or disciplinary authority over a member of the All-India Services which remains the President of India through the nodal ministry established by law. The decision taken by the Central Government or the CVC with respect to a public servant serving the affairs of the Union are open to judicial review before the High Court and the Supreme Court.

(Para 27)

Further held, that the CVC, every Vigilance Commissioner, the Secretary and every staff of the CVC are deemed, under Section 16 of the Act, to be public servants within the meaning of Section 21 of the Indian Penal Code. They are, therefore, not above the law nor can look at the Central Government from the cosmos. The two can best be seen as partners in the occupied field with the Central Government being the managing partner in cases of corruption. Since the decisions of the CVC are open to judicial review, they would have to stand the test of reasonableness, fairness-in-action and a non-arbitrary approach in deciding a matter through informed decision, of which, they have taken cognizance of. Non-arbitrary executive action is the heart of Article 14 and arbitrariness its poison. If discrimination is alleged under Article 14, the constitutional court exercises primary review by applying proportionality but when arbitrariness is alleged in executive action, this court plays the role of secondary review of primary action. In secondary review while testing arbitrary administrative action, unlike in cases of discrimination, the court applies Wednesbury principles, the tests being confined to see if discretion exercised caused excessive infringement of rights, acceptance of irrelevant fact or rejection of relevant fact in decision making.

(Para 28)

Further held, that the more serious issue which arises in this case is the constitutional validity of office memorandum dated 24.4.2008 advocated by the CVC as a complete bar and prohibition of re-consideration or review of its earlier decision even if request for re-consideration is based on new and material facts.

(Para 28)

Further held, that the more this Court reads OM dated 24.4.2008, the more it is convinced that the CVC has usurped jurisdiction which it does not possess under the Act. The CVC cannot shut the doors of reason and say that once it has taken a decision, good, bad or indifferent it will refuse to entertain any further thought, the mind blocking processes of which would impede on the fate of a Central Government servant, with the Central Government watching helplessly. It is often said that consistency is the virtue of an ass.

(Para 29)

Further held, that it is well settled that there can be "malice in law". Existence of such "malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part the dimension of the rule of relevance and reason as well as the rule of fair play in action. Every action of the State or its instrumentality in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Articles 226 and 32 of the Constitution.

(Para 34)

Further held, that I have, therefore, no hesitation in declaring instructions contained in OM dated 24.4.2008 (P-9) as arbitrary, unconstitutional and ultra vires the Central Vigilance Commission Act, 2003 by holding that whatever tramples upon human rights and common law principles of fairness and transparency in action and fair play does not deserve to survive. For these reasons, the impugned OM is quashed being in excess of powers granted to the CVC by the CVC Act, 2003 since I am unable to read it down to achieve the same result.

(Para 37)

Further held, that resultantly, the Central Government- respondent No.1 is directed to re-consider the matter afresh by itself as the disciplinary authority with respect to grant or refusal to grant sanction of prosecution of the petitioner by ignoring impugned OM dated 24.4.2008 (P-9) and the time limit of two months fixed therein which is held unreasonable even assuming arguendo that the OM is sustainable.

(Para 39)

Kanwaljit Singh, Senior Advocate with Mr. Vipin Mahajan, Advocate, *for the petitioner.*

Sanjay Joshi, Senior Panel Counsel, Union of India for the Central Government.

Rajesh Mehta, Additional A.G, Punjab

RAJIV NARAIN RAINA, J.

(1) The petitioner is a member of the Indian Forest Service. He was transferred and posted to Ropar as Divisional Forest Officer (DFO) on 9.4.1997. He remained posted at Ropar till 22.6.2001. There is a Dashmesh Education Society run by one Lt. Colonel B.S.Sandhu (Retired) (for short 'Col. B.S.Sandhu'). Before the petitioner joined as DFO, Ropar, Col. B.S.Sandhu had submitted an application dated 17.7.1996 on behalf of the Society for diversion of land measuring 4.94 hectares and 0.9 hectares (approximately 15 acres of land) for setting up of a school out of approximately 400 acres of land owned by him, which land, was covered by the provisions of the Forest (Conservation) Act, 1980. After the petitioner joined as DFO, Ropar, he got a report from the subordinate staff on the application and personally conducted spot inspection. He found no violation of provisions of Forest Conservation Act on the land which was subject matter of the application. The application of Col. B.S.Sandhu was forwarded to his superiors in the chain of command for them to take appropriate action. Diversion of land was sought by Col. B.S.Sandhu of approximately 15 acres of land out of the total area of 400 acres of land owned by him. During the period of posting of the petitioner as DFO Ropar, Col. B.S. Sandhu was found to have committed certain forest offences, for which, the petitioner in exercise of his powers as DFO Ropar got 6 criminal complaints registered against Col. B.S.Sandhu in the Court of Chief Judicial Magistrate, Ropar. The responsibility of Officers with respect to litigation is provided vide Government Notification No.183 dated 7.4.1924. The notification names the officers in the rank of Block Officer (Forester) to be the Public Prosecutor in criminal complaints lodged for commission of offences relating to forest. Despite the presence of notification dated 7.4.1924, the petitioner, in order to safeguard the interest of the State Government sought special approval from the Government of Punjab for appointment of the District Attorney, Ropar as Public Prosecutor for these six cases to represent the Forest Department. The reason for this request was that the forest officials are not best persons for conducting the cases which could best be left in the hands of the Law Officers of the State stationed in District Courts so that cases are well attended in Court. In June, 2001, the petitioner was posted out of Ropar in general transfer never to be posted back.

(2) Col. B.S. Sandhu is the Managing Director of Forest Hills Golf and Country Club, WWIC Resort Private Limited and Chairperson of Dashmesh Educational Society which last made the application for diversion of land. Since certain activities of Col. B.S. Sandhu had engaged the attention of the Community for allegedly committing the illegality and irregularities on forest land, this Court took suo-moto notice in **CWP No.1134 of 2004, Court of its own Motion v. State of Punjab and others.** The petition was disposed of by the Division Bench on 12.10.2004 with various directions. This Court directed the registration of First Information Report as contained in directions (viii) and (ix) which read as follows : -

> *"(viii) the Central Bureau of Investigation through its Director is directed to constitute a Special Investigation Team (SIT) to be headed by an officer not below the rank of Deputy Inspector General, which shall hold a through probe into the question of accountability of top executive and administrative functionaries of the departments concerned of the Govt. of Punjab, some officers of the Central Govt. in relation to establishment and development of the Forest Hill Resorts at village Karoran, Tehsil Kharar, District Ropar and to report as to whether any one of them indulged in taking direct or indirect gratification and/or acted in violation of the Conduct Rules, and if it finds the commission of a cognizable offence, to register a case under the appropriate provisions of the Penal Laws and hold investigation, positively within a period of six months from today;*
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> *(ix) the Special Investigation Team of the CBI shall also inquire into the report as to how much lands are actually owned by Col. B.S.Sandhu, his family members and/or the Societies/companies floated by them, whether "benami" or in their own names and as to whether or not violation of provisions of the Benami Transactions (Prohibition) Act, 1988 has taken place and to further proceed in the matter in accordance with law."*

(3) In para 74 of the judgment, this Court held that the entire land of village Karoran, Tehsil Kharar, District Ropar is forest land which has been utilized by Col. B.S. Sandhu for non-forest purposes including establish a Forest Hill Resort. The CBI was directed to constitute a SIT to be head

by an Officer not below the rank of DIG and to determine the accountability of the officers and the administrative functionaries of the Departments concerned and report on their involvement, if any, cognizable offences have been committed.

(4) Against the order of the Division Bench of this Court, one Mr. Suresh Sharma and some others preferred a SLP which was pending final adjudication. The Supreme Court issued interim orders staying demolition of construction on the land in question and ordered maintenance of status quo as on the date of judgment i.e. 12.10.2004. The Supreme Court has also issued directive that no commercial activity would be carried nor the Club be used by its members. As an aftermath of the order, the CBI registered a regular inquiry case dated 7.4.2006 under Sections 120-B read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 63 of the Indian Forest Act, 1927, Section 19 of Punjab Land Preservation Act, 1900 and Section 12 of Punjab New Capital (Periphery) Control Act, 1952. The petitioner was also named in the FIR. The case is pending before the Special Judge, CBI, Patiala at the stage of framing of charges.

(5) When the petitioner was appointed by promotion to the Indian Forest Service from State Forest Service, he was allocated to the State of Punjab. However, as an IFS Officer, the petitioner is is a Central Government servant but was working for the affairs of the State of Punjab. To prosecute a public servant like the petitioner, sanction of the Government is necessary under Section 197 of the Code of Criminal Procedure, in case, they are accused of any offence alleged to have been committed by them while acting or purporting to act in the discharge of their official duties. There is a bar in Section 197 that prohibits the Court to take cognizance of the offence except with the previous sanction. Where a public servant at the time of commission of the alleged offence is employed in connection with the affairs of the Union, then the Government of India has power and jurisdiction to grant sanction for prosecution. In case, the employment is with the affairs of the State, then it would be the State Government.

(6) Government of India in the Department of Personnel and Administrative Reforms have issued a letter dated 10.9.1979 addressed to the Chief Secretaries of all the States laying down the procedure for sanction

of prosecution against the members of All India Services in respect of the offence under the Prevention of Corruption Act, 1988. The State Government is the primary and administrative authority. Therefore, OM dated 10.9.1979 lays down that it would be appropriate that before moving Government of India for considering grant of sanction, the State Government should first take a decision whether in its opinion, a case for prosecution is made out, in which case, sanction under Section 197 Cr.P.C. is to be decided by the State Government. In similar strain, Central Vigilance Commission (CVC), New Delhi has issued its own manual of instructions providing guidelines to be adopted on the subject of sanction of prosecution of members of All India Services. Clause 10.5 of Chapter 7 of the Manual lays down as under : -

> *"10.5 In the case of All India Service officers serving in connection with the affairs of the State Government, Central Government's sanction is required for prosecution, under Section 19(1) of the Prevention of Corruption Act, 1988. It would be appropriate that before moving the Central Government for sanction in such a case, the State Government should themselves take a firm decision that, in their opinion, a case for prosecution is made out and they should either issue their sanction under Section 197, Cr. Procedure Code or they should, before moving the Central Government, obtain the firm orders of the competent authority in the State Government hierarchy and the State Government would issue their sanction simultaneously with the Central Government's decision to sanction the prosecution under the provisions of the Prevention of Corruption Act, 1947. There is otherwise also the risk that Courts may take a view, that the State Government had not really applied its mind before according sanction in terms of sanction 197, Cr.P.C. in case that State Government's sanction just follows the Central Government's sanction under the provisions of the Prevention of Corruption Act. This might result in a lacuna leading to the legal proceedings being quashed or held up."*

(7) In the CBI investigation, on the directives of this Court, no culpability of the petitioner was found except that the petitioner had forwarded the application of Col. B.S.Sandhu for diversion of land to higher authorities

for further action and secondly, six criminal cases initiated by the petitioner against Col. B.S. Sandhu were dismissed by the Court of CJM, Ropar in December, 2001 long after he had been posted out of Ropar. These six cases are stated to have not been pursued in higher Courts. Having left Ropar in June, 2001, the petitioner had seized to be the incharge of the Division for purposes of prosecution. The damage report issued on 2.11.2001 and action thereon was not required to be performed by the petitioner after his transfer. All effective steps were required to be taken by the successors-in-interest of the petitioner in the office of DFO, Ropar. The petitioner dispersed that in the report of the CBI, there is a conspicuously silence with respect to action required to be taken by the successors of the petitioner. He asserts that no investigation was conducted from this angle.

(8) The State Government examined the issue of grant of sanction or not in the case of the petitioner. The State Government is stated to have sought the advice of the Advocate General, Punjab for his opinion. The Advocate General, Punjab examined the case and rendered opinion that no prima facie case is made out against the petitioner. A copy of the opinion obtained under Right to Information Act, 2005 has been placed on record as Annexure P-6. The State Government declined the request of CBI for grant of sanction for prosecution of the petitioner under Section 197 Cr.P.C. and Section 19 of the Prevention of Corruption Act, 1988. Such order was passed on 17.12.2008. The request of the CBI was declined.

(9) The Central Vigilance Officer in the Ministry of Environment and Forest while holding parallel proceedings did not agree with the recommendations and investigation report of CBI qua the petitioner for giving sanction of prosecution. Government of India while disagreeing with the report of the CBI specifically recorded that from the CBI report, it is not clear as to what follow up action was needed in the case of 6 complaints filed in the Court of CJM, Ropar and what inadequacies exist on the part of the petitioner for follow up action. The follow up action in June, 2011 rests on the shoulder of the successors to the petitioner. Government of India concluded that there was no case for prosecution qua the petitioner and recommended that at the most a case of regular departmental enquiry for minor penalty may be initiated against the petitioner. In the petition, the petitioner speaks from record obtained by him under the Right to Information Act which includes a report and the final notings. These copies are, therefore,

authorized version properly obtained. Meanwhile, the Central Vigilance Commission sitting on the matter passed the impugned order dated 30.9.2008 rejecting the recommendations of the Government of India, the competent authority for grant of sanction. A recommendation was made by the CVC for grant of sanction for prosecution by a short order which reads as follows : -

" *CONFIDENTIAL*

No.008/AGR/010/22696
Government of India
Central Vigilance Commission

Satarkata Bhawan, Block-A
GPO Complex, INA, New Delhi

Dated : 30.09.2008

OFFICE MEMORANDUM

Subject : RC-CHG-2006-A0013 against Shri J.S. Samundri, IFS, the then DFO, Ropar, Shri Harsh Kumar, the then DCF (P & I), Hoshiarpur, and Shri Parveen Kumar, the then DFO, Ropar.

Ministry of Environment and Forests may refer to their Note No.15011/2/2008.AVU dated 19.08.2008 on the above subject.

2. The reference made by the Ministry has been examined by the Commission. ***It is observed that this was a*** *long drawn conspiracy in which many officers of Forest as* ***well as other departments have colluded****. Considering the gravity of the misconduct on the part of S/Shri J.S.Samundari, Harsh Kumar and Parveen Kumar, the Commission would advise sanction of prosecution as well as initiation of major penalty proceedings against S/Shri J.S.Samundari, then DFO, Ropar, and Harsh Kumar, then DCF (P&I), Hoshiarpur and initiation of major penalty proceedings against Shri Parveen Kumar, then DFO, Ropar.*

3. Receipt of Ministry's file/records may be acknowledged and action taken in pursuance of Commission's advice be intimated at an early date.

Sd/-
(Prabhat Kumar)
Deputy Secretary"

(10) The petitioner asserts that this a cryptic and non-speaking order where relevant material has been ignored and irrelevant premise has been drawn from a generalization that since there is a "long drawn conspiracy in which many officers of the Forest as well as other Department have colluded", sanction of prosecution is recommended. There is a circular issued by CVC dated 24.4.2008. It was decided that no proposal for reconsideration of the Commission's advice would be entertained unless new additional facts have come to light which would have the effect of altering the seriousness of the allegation/charges levelled against an Officer. The matter of re-consideration by CVC has been made extremely limited. The scope of re-consideration has been made very limited in cases where CVC has taken a view different from one proposed by the organization, then the perception of the Commission over the seriousness of the lapses or otherwise, would have primacy. In such cases, there is no scope for reconsideration. No proposal for consideration on the Commission's advice would be entertained following the circular dated 24.4.2008 unless case falls under the exceptions carved out/additional facts substantiated by adequate evidence tagged with an explanation as to why the evidence was not considered earlier while approaching the Commission for its advice. Learned counsel for the petitioner urges that this circular entrenches upon the power of the Government of India and the same is not supported by the provisions of the Central Vigilance Act which makes it a recommendatory body but not the final arbiter of the fate of an officer, for whom, sanction of prosecution is sought, granted or declined.

(11) The State Government having declined sanction to prosecute the petitioner and despite the earlier recommendations of the CVC itself, Government of India referred the matter to the CVC which did not consider the request citing circular dated 24.4.2008 which leaves no scope for re-consideration.

(12) The Government of India left in a cul-de-sac put its stamp mechanically on the draft order sent by the CVC and granted sanction for prosecution of the petitioner. This order dated 16.12.2008 is impugned in this petition (P-10). At this stage, a rather serious but strange issue of jurisdiction arises which I would discuss later, but so far as the Government of India is concerned, the matter was put to a brutal end on 16.12.2008 with the deadly whip issued by the CVC, as the Government of Punjab fiddled when Samundri burned and took its time to decide the matter with respect to sanction for a sufficiently long and unreasonable time, for which, the petitioner cannot be blamed, declining the request of the CBI for grant of sanction for prosecution of the petitioner vide its order dated 27.8.2008 (P-11) i.e. long after the battle was over and the city burnt to cinder.

(13) It is obvious that the precious view of the State Government was not available before the CVC or the Government of India or CBI for that matter when adverse final decisions of far reaching consequences were taken against the petitioner behind his back. The State Government's view was an important input in the decision making process which drew a blank. The view of the State Government would remain shut by an iron curtain of the CVC circular dated 24.4.2008 only to be peeped in by this Court at the final hearing in judicial review. Mr. Kanwaljit Singh, Learned Senior Counsel appearing for the petitioner submits that serious prejudice was caused to the petitioner by the culpable delay of the Punjab Government in deciding the matter on the question of sanction. The DOPT circular which cannot wait beyond 6 months for State Government view cannot be used unreasonably against the petitioner since he had no control in Government corridors.

(14) Be that as it may, the fresh inputs were now available to the Government of India. The matter was once again taken up by a detailed note running into 4 pages which was put up to the CVC suggesting that no case is made out against the petitioner for grant of sanction of prosecution as CBI has failed to establish any pecuniary benefits or any other benefits to have been taken by the petitioner with respect to the letter of Col. B.S.Sandhu praying for diversion of 15 acres of land. There is nothing against the petitioner except forwarding of two letters which Col. B.S. Sandhu had submitted to his predecessor DFO Ropar and the petitioner had only forwarded the request to his superior officers for their action and

orders. On this argument, Mr. Kanwaljit Singh, Learned Senior Counsel for the petitioner argues that the entire facade of the impugned order dated 30.9.2008 crumbles to the ground leaving CVC holding an order which does not even disclose the process of reasoning in recommending sanction of prosecution of the petitioner and some others, with Government of India looking like a helpless bystander in abdication of its authority. Government of India asked that in view of the availability of the entire facts of the case and the recommendations of the State Government, CVC may withdraw sanction given on 16.12.2008. This is how the matter was taken up again at CVC level but was dropped finding no provision to withdraw sanction once granted.

(15) Mr. Kanwaljit Singh has taken me through the noting portion dated 25.11.2009 on the files of the Government of India obtained and placed on record of this case through the Right to Information Act, 2005.

(16) It is in this background that the petitioner has approached this Court through the present petition. This Court issued notice of motion on 19.1.2011 to the respondents and made an interim order that the trial court will defer the date of hearing of the criminal case to a date beyond the date fixed by this Court. That order continues to operate and stands reconfirmed vide order dated 27.9.2011 directing the interim order to continue.

(17) A counter affidavit has been filed on behalf of respondent No.1. A separate affidavit of Mr. D.S.Bains, IAS, then Financial Commissioner and Secretary to Government of Punjab, Department of Forests and Wildlife Preservation has been filed on behalf of the third respondent. This is in parawise reply form. The Court is informed that the State Government has declined request of CBI for grant of sanction of prosecution of the petitioner vide Punjab Government letter dated 27.2.2009. For other matters, the State Government points to the replies of the other respondents since the State Government has no concern left with the orders impugned which have either been passed by Government of India or CVC. CVC respondent No.2 has chosen not to file reply.

(18) The Government of India in its reply says that the petitioner forwarded two applications of Col. B.S. Sandhu dated 4.7.1997 and 14.7.1997 for setting up a farm house/resort and for building a school in

village Karoran, Tehsil Kharar, District Ropar, Punjab to the Conservator of Forests, Shivalik Circle, Government of Punjab with the recommendation that the conversion of land measuring 4.94 and 0.9 hectares respectively may be allowed. While forwarding the applications, the petitioner failed to mention violations of the Forest Conservation Act done by Col. B.S. Sandhu. Besides this, the petitioner received 6 complaints during his posting as DFO which had led to the filing of 6 criminal cases against Col. B.S. Sandhu for violation of forest land laws by M/s Dashmesh Educational Society. These complaints were pending in the Trial Court when the petitioner was transferred from DFO, Ropar in June, 2001. The petitioner could have made a mention of these violations while forwarding the applications for diversion of land. Respondent No.1 would refer to the CBI investigation report containing the allegations against the petitioner. These are reproduced as under : -

> *"a) On the basis of the damage reports filed by Shri Balwinder Singh, the then Forest Guard, for various violations committed by Lt. Col. (Retd) B.S. Sandhu, six complaints were filed by the applicant, Shri Samundri, in the Court of CJM, Ropar under section 5 of the FC Act, 1980. The petitioner, however did not pursued the cases properly resulting in the CJM dismissing the complaints on 22.12.2001. It is further alleged that no action was taken after June, 1997 till November, 2001 when 3 complaints under the provisions of FC Act, 1980 were filed in the Court of CJM, Ropar.*
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> *(b) The petitioner failed to take action to prevent destruction of forest land by Lt. Col. (Retd.) B.S. Sandhu and his associates inspite of filing of damage reports.*
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> *(c) Lt. Col. (Retd.) B.S. Sandhu, President, Dashmesh Educational Society had made two applications dated 04.07.1997 and 14.07.1997 to the then DFO Ropar, the applicant, for grant of permission for construction of the Farm House/Resort. The RFO, Siswan had intimated to the DFO regarding the violations committed by Lt. Col. (Retd) B.S. Sandhu in Village Karoran. Inspite of being well aware of the serious violations committed*

by Lt. Col. (Retd) B.S. Sandhu, the petitioner forwarded the proposals to the CF, Shivalik Circle, Government of Punjab recommending conversion may be allowed. The proposal from the State Government for conversion of land was finally rejected by the CF (Central), Chandigarh and directed the State Government to fix responsibility for violations and take necessary action against defaulting officials.

(d) The petitioner on the one hand did not take any effective action to prevent destruction of forest land by Lt. Col. (Retd) B.S. Sandhu and his associates and on the other hand he forwarded two proposals of Lt. Col. (Retd) B.S. Sandhu, for conversion of forest land for non forest purposes concealing the material facts that six damage reports have already been filed against Lt. Col. (Retd.) B.S. Sandhu by the petitioner himself. Even the damage reports/complaints were not pursued properly, which were dismissed later on. During his entire period of posting as DFO, Ropar, the petitioner remained silent and took no action. The conduct of the petitioner clearly shows that he not only failed to discharge his statutory obligations but also by abusing his official position as public servant allowed Lt. Col. (Retd) B.S. Sandhu, to continue with his illegal activities. He willfully concealed the facts and by abusing his official position while showed undue favour in forwarding the proposals submitted by Lt. Col. (Retd) B.S. Sandhu for diversion of land of 0.92 ha and 4.94 ha."

(19) The petitioner is said to have shown undue favour in forwarding the proposals submitted by Col. B.S. Sandhu for diversion of land. Government of India has admitted in its reply that there was delay on the part of Government of Punjab in making an order of whether or not to criminally prosecute the petitioner. Government of India had invited comments from the State Government on receipt of the investigation report from the CBI on 20.3.2008. Since the State Government did not respond even after waiting for a period of 6 months, in terms of DOPT guidelines, decisions

were taken in the absence of the comments of the State Government. The view of the Government of India on various aspects of the matter are as follows: -

"(i) The kind of follow up required is not clear from the report. Generally when cases are filed in the Court of law through a government pleader, it is the government pleader who appears in the court form time to time. He has to ensure the lawful outcome of the violations done. Nothing is indicated in the CBI report about the inadequacies on the part of the petitioner.

(ii) The complaints were still pending in the court of CJM, Ropar when the petitioner made over the charge in June, 2001. The complaints were dismissed by the Court in December, 2001.

(iii) The CBI report is silent about the follow up action taken on the complaints by the successor of the petitioner.

(iv) The applications for diversion of land were forwarded by the petitioner to the CF, Shivalik Circle, who might have also visited the site before forwarding the applications further to the PCCF and Secretary, Government of Punjab.

(v) Merely forwarding of applications for diversion of land does not appear to be an act of undue favour and a ground for prosecution of the officer.

(vi) As per statement of the petitioner made in his representation submitted to the Government of India, there were no violations on the particular land measuring 4.94 ha for which permission was sought.

(vii) Both the applications were ultimately rejected by the Central Government i.e. by Conservator for Forests (Central), Chandigarh.

(viii) As no permission has been granted to M/s Dashmesh Educational Society for diversion of land, evidently no benefit has been extended to him.

(ix) There is no case for prosecution of the applicant for the lapses/irregularities alleged to have been committed by him.

(x) RDA for minor penalty may be initiated against him."

(20) The Government of India supported the petitioner after it found through a conscious decision that no case for prosecution of the petitioner for lapses/ irregularities alleged to have been committed by him was made out. With these observations, the matter ought to have been dropped since Government of India was the ultimate repository of power over the fate of the petitioner, a Central Government servant, with respect to sanction of prosecution or not. Having taken this decision, the matter was referred to the CVC for final approval. The CVC turned around and passed the impugned order dated 30.9.2008 recommending grant of prosecution and sanction on the generalized plea that a long drawn conspiracy was hatched without spelling out the reasons connecting the petitioner with the conspiracy. Government of India then in its reply says that the advice of the CVC be examined in terms of CVC circular dated 24.4.2008 which barred review and it was then decided to accept the advice. That is how the impugned order was passed granting sanction for prosecution against the petitioner vide letter dated 16.12.2008 (R-5).

(21) Though it is not mentioned in the short affidavit filed by the State Government dated 8.9.2011 but a vital input is contained paragraph 10 of the counter affidavit of the Government of India. It is disclosed that Government of Punjab requested Government of India to rescind the sanction order dated 16.12.2008 under Section 19 of the Prevention of Corruption Act, 1988. A copy of the letter of the State Government dated 19.2.2009 is Annexure R-6. While the CVC circular dated 24.4.2008 laid down strict rules against re-consideration but Government of India on receipt of Punjab Government letter dated 19.2.2009, re-examined the matter as it found that there were some new facts which warrant reconsideration of the question of sanction. The question of withdrawal of prosecution sanction issued against the petitioner was also examined. It was recommended that in the light of the facts presented by the Government of Punjab vide their letter dated 19.2.2009, sanction of prosecution may be withdrawn. The matter was referred to CVC to conduct a meeting on 26.2.2010 in which DIG, CBI, Chandigarh and Joint Secretary, CVO, Ministry of Environment and Forests, participated along with the officers of the Commission. The result of the meeting was that the CVC refused to budge taking shelter of its own circular that there is no law to withdraw sanction for prosecution once granted. Another rather awkward view taken

in the meeting as appears from the counter affidavit was that the views of the Punjab Government could be considered before the Ministry derived satisfaction that the case was fit for prosecution and not after issuing it. Still further, the Commission found that CBI has already filed the charge sheet based on the sanction for prosecution accorded by the Ministry under Section 19 of the Prevention of Corruption Act, 1988. It was for the Court to take a view and there was nothing further to be done by the Ministry of Environment and Forests. The consultation with the Commission, at this stage, was also meaningless. This is how the CVC rejected the proposal of the Government of India in the Department of Environment and Forests to withdraw sanction of prosecution against the petitioner.

CBI REPORT as viewed by the Government of India in the Ministry of Environment and Forests emerging from the noting sheets at different levels of the Ministry qua the petitioner.

(22) The CBI in its report concluded with respect to the petitioner that he had entered into a criminal conspiracy with Col. B.S.Sandhu, Shri Harsh Kumar, IFS, Shri H.B.S. Sidhu, IAS and Shri Rajiv Bajaj, Estate Officer, Forest Hill Resort and in furtherance of this conspiracy, the accused public servants abused their official position and showed undue favour to Col. B.S.Sandhu (retired) and his associate Shri Rajiv Bajaj resulting in construction of Forest Hill Resort in violation of the provisions of the Punjab Land Preservation Act, 1900, Forest Conservation Act, 1980, Indian Forest Act, 1927 and Punjab New Capital (Periphery) Act, 1952. The CBI recommended both prosecution and departmental proceedings against the petitioner and two other Indian Forest Service Officers. On examination of the report in the Ministry, it was concluded that a regular departmental inquiry for minor penalty be initiated against the petitioner while sanction of prosecution deserves to be accorded against Shri Harsh Kumar, IFS and major penalty proceedings were recommended against Shri Parveen Kumar, IFS. The Director (Vigilance) in the Ministry observed on noting sheet as follows : -

> *"(a) The violations made by Lt. Col. Sandhu, for which complaints were earlier filed by Shri Samundari, appears to be on a different land than that for which permission was sought for construction of Resort and School. CBI Report does not say that violations were on the same land.*

(b) The land details are not available in the documents received from CBI. However, Shri Samundari has enclosed the land details with his representation, which may kindly be seen at flag 'R'.

(c) The certificate at flag 'S' shows that Conservator of Forest had personally visited the site before forwarding the applications to PCCF.

(d) One application of Lt. Col. Sandhu was for construction of a School on land measuring 0.92 hectares and the other was for construction of Forest Hill Resort on a land measuring 4.94 hectares.

(e) As regards the DFO, during the period from June 2001 to March 2002, the CBI report is silent as to who was the DFO after Shri Samundari left and before Shri Parveen Kumar took over as DFO, Ropar on 16.04.2002. No case has been made by the CBI against the DFO during the said period.

Sd/-
16.07.2008"

(23) The Joint Secretary and the Chief Vigilance Officer after discussing the matter with the Director (Vigilance) recommended approving para 13 of note at N/P 12 which had, *inter alia*, recommended only disciplinary action for minor penalty against the petitioner. This noting is signed on 16.7.2008. On 19.8.2008, a noting sheet was started that the Minister of State (F & WL) had approved the proposed course of action and to convey the case to CVC for their advice in the matter. This noting sheet was signed on 19.8.2008 by SO (Vigilance). The Director (Vigilance) signed it on the same day. The crucial advice of the CVC was received on 30.9.2008. It is recorded that the CVC had observed that there was long drawn conspiracy, in which, many officers of Forest as well as other Departments have colluded. It was apparent, as recorded in the noting sheet in para 3 at page 125 of the paper-book, that the advice of the CVC is at variance with the decisions taken earlier by the Ministry. The matter rested on either to accept the advice of the CVC and issue orders accordingly or to disagree with the advice. In the latter case, the case was required

to be sent to the CVC for its re-consideration. The ministry belaboured by the advice of the CVC under the yoke of the impugned OM dated 24.4.2008 shutting out re-consideration altogether succumbed and the Director (Vigilance) in his noting signed on 6.11.2008 felt compelled to accept the advice of the CVC as final. The approval of the Minister of State (F & WL) was solicited whether or not to accept the advice of CVC. The draft prosecution sanction in the case of the petitioner and Sh. Harsh Kumar, IFS was put up for approval. Accepting the advice of his Ministry, the Minister-in-charge approved the draft prosecution sanction order. That is how the impugned sanction order came to be passed launching criminal prosecution against the petitioner. However, on receipt of the order of the Punjab Government declining sanction to prosecute the petitioner the Minister's request for permission to withdraw sanction for prosecution earlier recommended to be declined, based on the disagreement of the Punjab Government on this issue, though received belatedly, met sudden death in the office OM dated 24.4.2008 (P-9). This is what has brought the petitioner to Court on 8.1.2011 with this petition.

(24) I have heard Mr. Kanwaljit Singh, learned Senior Counsel, appearing with Mr. Vipin Mahajan, Advocate, learned counsel for the petitioner, Mr. Sanjay Joshi, Senior Panel Counsel, Union of India for the Central Government and Mr. Rajesh Mehta, Additional A.G., Punjab at substantial length and with their assistance, have perused the entire record placed before this Court including the noting sheets.

(25) Mr. Kanwaljit Singh, learned senior counsel submits that the final arbiter of the fate of the petitioner, who is a Central Government servant, is the Central Government in the Ministry of Environment and Forests to grant or refuse sanction for prosecution of the petitioner. The CVC is a recommendatory body which has a major role to play in checks and balances but is not the *pater familias* in a hierarchy of decision making process. The Central Vigilance Commission Act, 2003 empowers the Commission to act as the conscience keeper of the Central Bureau of Investigation constituted under the Delhi Special Police Establishment Act, 1946 and be its guiding hand and to exercise superintendence over its functioning with respect to offences committed under the Prevention of

Corruption Act, 1988 or offences committed by public servants (see Section 8). The CVC was created in 1964 to address governmental corruption and became a statutory body in 2003 with the coming force of the Central Vigilance Commission Act, 2003. It is designed to inquire into conduct of central government servants against offences allegedly committed under the Prevention of Corruption Act, 1988. It is a reviewing or recommendatory body depending on nature of advice sought by about 1500 central government departments and ministries. Being an advisory body the central government departments and ministries are free to either accept or reject CVC's advice in corruption cases. Section 8 (1) (g) of the Act empowers it to tender advice.

(26) Section 21 of the Act empowers the Commission with the previous approval of the Central Government, by Notification in the Official Gazette to make regulations not inconsistent with the parent Act and the rules made thereunder to provide for all matters, for which, provision is expedient for the purpose of giving effect to the provisions of the Act. Every Notification, Rule etc. issued by the Commission under Section 8(2)(b) has to be laid before each House of Parliament while it is in session for a total period of 30 days etc.

(27) A reading of the provisions of the Act leave no manner of doubt that the CVC is a recommendatory body but has not been given over riding power in its relationship with the Central Government. Section 17 of the Act requires that if the Central Government does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission. Section 19 of the Act lays down that the Central Government shall, in making rules or regulations governing vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of All-India Services consult the Commission. Consultative process cannot be seen as giving primacy to the CVC to override the power of the appointing or disciplinary authority over a member of the All-India Services which remains the President of India through the nodal ministry established by law. The decision taken by the Central Government or the CVC with respect to a public servant serving the affairs of the Union are open to judicial review before the High Court and the Supreme Court.

(28) Section 15 of the Act mandates that no suit, prosecution or other legal proceeding shall lie against the Commission in respect of anything which is in good faith done or intended to be done under the Act. The CVC, every Vigilance Commissioner, the Secretary and every staff of the CVC are deemed, under Section 16 of the Act, to be public servants within the meaning of Section 21 of the Indian Penal Code. They are, therefore, not above the law nor can look at the Central Government from the cosmos. The two can best be seen as partners in the occupied field with the Central Government being the managing partner in cases of corruption. Since the decisions of the CVC are open to judicial review, they would have to stand the test of reasonableness, fairness-in-action and a non-arbitrary approach in deciding a matter through informed decision, of which, they have taken cognizance of. Non-arbitrary executive action is the heart of Article 14 and arbitrariness its poison. If discrimination is alleged under Article 14, the constitutional court exercises primary review by applying proportionality but when arbitrariness is alleged in executive action, this court plays the role of secondary review of primary action. In secondary review while testing arbitrary administrative action, unlike in cases of discrimination, the court applies Wednesbury principles, the tests being confined to see if discretion exercised caused excessive infringement of rights, acceptance of irrelevant fact or rejection of relevant fact in decision making, see ***Om Kumar & others*** versus ***Union of India (1).*** Keeping this background in view, the impugned order granting sanction (P-10) would need to be examined. The more serious issue which arises in this case is the constitutional validity of office memorandum dated 24.4.2008 advocated by the CVC as a complete bar and prohibition of re-consideration or review of its earlier decision even if request for re-consideration is based on new and material facts. For instance, in this case, the decision of the Government of Punjab declining sanction and other such incidental and ancillary matters which arise out of common sense, equity, justice and good conscience would have to be factored in the repeat decision making process since when the previous was taken the valuable input of Punjab Govt. order was not in existence. It is from

(1) (2001) 2 SCC 386

these reference points that the validity of the circular dated 24.4.2008 has to be tested and judged. Impugned OM dated 24.4.2008 reads as follows:

" *No.008/VGL/027*

Government of India
Central Vigilance Commission

Satarkata Bhawan, Block-A,
GPO Complex, INA,
New Delhi 110023

Dated : 24.04.2008

CIRCULAR NO.15/04/2008

Subject : Reference to the Commission for reconsideration of its advice-regarding.

The commission has expressed serious concern about receiving repeated requests for the reconsideration of its advice that give the impression of being Vigilance Manual. The present instructions contained in para 5.16, Chapter-1 of Vigilance Manual, Vol.1 provide that where the department propose to take a lenient view or stricter view than that recommended by the Commission, consultation with the CVC is necessary. The departments, therefore, are required to approach the Commission for advice in such cases before a final decision is taken. It has also been stated that the reference for reconsideration of the Commission's advice should be made only once. Subsequently, it was instructed vide letter No.000/DSP/1 dated 06.03.2000 that reconsideration proposals should be sent within a period of two months from the date of receipt of the Commissioner's advice. It has been observed that the proposals for reconsideration of the Commissioner's advice are not sent within the stipulated time. Further, justification warranting reconsideration is also not given.

2. In view of the position stated above, the Commission has reviewed its instructions in the matter. The Commission's advice is based on the inputs received from the organization and where the Commission has taken a view different from the one proposed by the organization, it is on account of the Commission's perception of the seriousness of the lapses or otherwise. In such cases, there is no scope for reconsideration. The Commission has, therefore, decided that no proposal for reconsideration of the Commission's advice would be entertained unless new additional facts have come to light which would have the effect of altering the seriousness of the allegations/charges leveled against an officer. Such new facts should be substantiated by adequate evidence and should also be explained as to why the evidence was not considered earlier, while approaching the Commission for its advice. The proposals for reconsideration of the advices, if warranted, should be submitted at the earliest but within two months of receipt of the Commission's advice. The proposals should be submitted by the disciplinary authority or it should clearly indicate that the proposal has the approval of the disciplinary authority.

3. The above instructions may be noted for strict compliance.

Sd/-
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers. "

(29) The more this Court reads OM dated 24.4.2008, the more it is convinced that the CVC has usurped jurisdiction which it does not possess under the Act. The CVC cannot shut the doors of reason and say that once it has taken a decision, good, bad or indifferent it will refuse to entertain any further thought, the mind blocking processes of which would impede on the fate of a Central Government servant, with the Central Government watching helplessly. It is often said that consistency is the virtue of an ass.

(30) Take this case, the Central Government after prolonged deliberations and keeping in view the totality of circumstances, did not find any criminal intent against the petitioner and recommended only departmental enquiry for minor misconduct and consequently, took the decision that it was not a case for sanction of prosecution. That decision was taken even before further positive input came- the Government of Punjab declining sanction to prosecute the petitioner. When the CVC decided the matter, the decision of the State of Punjab was not available due to inordinate and culpable delay on the part of the Government of Punjab in taking final decision with respect to the fate of the petitioner on the question of sanction of prosecution. When both these; Central Government's opinion as found in the noting sheets before it was bulldozed by respondent CVC, and the Punjab Government's opinion are juxtaposed, the result may be startling, and may pale into insignificance the obdurate decision of the CVC taken without any reasonable rejection ground except assuming that *"there* was long drawn conspiracy in which many officers of Forest as well as *other Departments have colluded"*. These words as found in the impugned office memorandum dated 30.9.2008 advising sanction for prosecution and initiation of major penalty proceedings against the petitioner and two others on such a whimsical premise. A reading of the office memorandum dated 30.9.2008 betrays public trust reposed in the CVC, an "integrity institution" postulated in ***Centre for PIL*** versus ***Union of India (2)***, that requires it to speak out its mind with clarity, probity and without any vice of ambiguity. One can go on reading memo dated 30.9.2008 but still not find what actually weighed in the mind of the CVC in making the order against the petitioner. The decisions of the CVC are expected to illuminate the mind rid of any bias, and I dare say any reasonable man on reading it would say what has this man done after all, what conspiracy?

(31) The petitioner is accountable as a public servant, his conduct is in public domain. He would not escape condemnation for public wrong done for private purpose. Not only the common man but this Court also has greater right to know what weighed in the mind of the CVC to visit the petitioner with such magnitude of harm. This Court could have easily quashed the OM dated 30.9.2008 on the short ground of being cryptic and non-speaking and passed contrary to the principles of natural justice and remitted the matter back for re-consideration. But if this Court were to

(2) (2011) 4 SCC 1

adopt this short cut path, the fetters of OM dated 24.4.2008 (P-9) would yet again obstruct re-consideration because knocking at the tightly shut door of reason would not be heard. There should be enough space for a constructive dialogue between the two bodies in cases of grant or refusal of sanction of prosecution. The trauma of criminal trial should be inflicted for the weightiest of reasons which *ex facie* appear to be just and reasonable not only to a man of law but also to the common man who is also a stake holder in the fight against corruption in public office.

(32) Therefore, the core issue, in this case, is whether OM dated 24.4.2008 (P-9) deserves to be left intact or removed permanently as an obstacle not only in the way of the petitioner but in the way of every public servant seeking justice from the Central Government, where it is acting as the disciplinary authority. The further ancillary question is whether access to reason can be shut permanently by efflux of time, that is, '*within two months of receipt of the Commission's advice*' or only to "*new additional facts*" coming to light and not old ones seen in new light. In the matter of reconsideration I am inclined to think that old, new and additional facts are all meaningful and worthy of a re-look so long as justice is served but not to dishonestly change opinion to suit a petition monger or wrongdoer. I wonder why should brakes be put at all on the wheels of reconsideration or review of administrative action greased with reason which touches upon the liberty of an individual. That would not be logical. It is another matter whether old, new and additional facts justify reconsideration. That is a matter of opinion. Opinion which is nonetheless open to judicial review.

(33) A reading between the lines of the written statement filed by the Union of India shows its utter helplessness in the matter and fear to roughshod the CVC on its refusal to reconsider the matter with new additional facts and fresh inputs pointed out by the nodal ministry appearing rather unsure of its own primacy of jurisdiction. I feel that there has been complete abdication and surrender of authority by the Central Government in this case perhaps to avoid an ugly confrontation with the respondent CVC. I am not on what the petitioner may or may not have done for pushing two papers to the office tables of his superiors except to re-emphasize that the rule of law must prevail and breathing space in jural relationships must keep safe distances between each other in a fine balance which the impugned OM dated 24.4.2008 fails to maintain. It appears that the Central Government

has not examined consciously the ill effects of this OM handed out from the CVC warehouse before it caved in and issued the sanction order against the petitioner. By all means, the CVC can govern itself but not the Central Government or this Court or the living tissue of the human mind craving for reason obsessively. The end product of the impugned OM appears to be in human rights violation and Article 21 of the Constitution of India which protects life and liberty and orders due process of law. After all, we made the laws for ourselves. The laws did not make us. Laws try to make our lives orderly and we scatter them into disorderliness. If this Court finds unreasonableness in any instrument pretending to have legal sanction where none exists or that it adversely affects fundamental or civil rights of the individual, it must invoke its constitutional authority to strike it down as it would do to injustice wherever found and bring it in tune with the precious law of common sense. It appears settled that the rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law. It appears to this Court that the length and breadth of OM dated 24.4.2008 (P-9) in the context of the subject matter covered by it is extramural, extralegal, rigid and almost inflexible in its make up. It leaves no free play in the joints for the Central Government sequestered in the strait jacket of the OM almost unable to breathe. The impugned OM in effect is calculated to obstruct the cause of truth and justice. Power corrupts but absolute power corrupts the mind absolutely.

(34) In ***Mahabir Auto Stores*** versus ***Indian Oil Corporation (3)***, the Supreme Court observed that the existence of the power of judicial review however depends upon the nature and right involved in the facts and circumstances of the particular case. It is well settled that there can be "malice in law". Existence of such "malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part the dimension of the rule of relevance and reason as well as the rule of fair play in action. Every action of the State or its instrumentality in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Articles 226 and 32 of the Constitution.

(3) (1990) 3 SCC 752

(35) Mr. Kanwaljit Singh, learned Senior Counsel relies on a decision of the Supreme Court in ***Mansukhlal Vithaldas Chauhan*** versus ***State of Gujarat (4)***, to contend that in the matter of prosecution of a public servant, the sanctioning authority has to apply its own mind whether to grant or not to grant sanction. Even the Court cannot order sanction of prosecution and in case, it is so ordered, it is not valid. It is only the person competent to remove a public servant from office, on the date when the alleged offence is committed, that can exercise jurisdiction. The CVC is not an authority competent to remove the petitioner. If the Central Government has any fear of CVC, that will not denude the constitutional duty of this Court to intervene in an appropriate case to secure the ends of justice or to avoid miscarriage of justice and restore the operation of the rule of law as found within the constitutional and statutory framework guiding executive action. I am unable to free myself of the thought that Central Government cannot act independently on advice tendered by CVC or State Government and must depend on crutches without following truth of its own wherever it may lead.

(36) On merits, the learned Senior Counsel submits that there was no violation of Forest laws etc. on land measuring 4.94 hectares and 0.9 hectares (approximately 15 acres) required for setting up of a school for which object two applications were moved by Col B. S. Sandhu praying for diversion of land which the petitioner forwarded to his next superior for further action, if any, in the matter. The petitioner was not the authority to accord sanction for diversion of land. The 400 acres of land where widespread violations were alleged/found had nothing to do with the smaller parcel of land for which the applications were made where there were no violations of laws alleged. For violations found on the other large tract of land where the club/resort came up the petitioner was himself the official complainant in 6 criminal cases and in the conduct of which trials there was nothing remiss till after the petitioner was posted out of Ropar never to return there. The present is also not a case of graft, illegal gratification or bribe demanded, paid or not paid or financial loss caused by the petitioner by any act of commission or omission to the State exchequer, neither is it suggested by the respondents in the written statements. Assuming arguendo, that the two applications submitted by Col B. S. Sandhu to the petitioner's predecessor-in-interest the file of which was inherited by the petitioner

(4) 1997 (4) RCR (Crl.) 236

holding office was not forwarded by him he could have landed in serious trouble for failure to do so. It is, thus, a matter of perception, a point of view.

(37) I have, therefore, no hesitation in declaring instructions contained in OM dated 24.4.2008 (P-9) as arbitrary, unconstitutional and ultra vires the Central Vigilance Commission Act, 2003 by holding that whatever tramples upon human rights and common law principles of fairness and transparency in action and fair play does not deserve to survive. For these reasons, the impugned OM is quashed being in excess of powers granted to the CVC by the CVC Act, 2003 since I am unable to read it down to achieve the same result.

(38) Since the only obstruction in the way of the Central Government was OM dated 24.4.2008, its PUC decisions based on reason as recorded and found in the noting sheets is revived in its chain of thought. Consequently, the impugned order dated 16.12.2008 stands quashed. The Office Memorandum dated 30.9.2008 (P-8) issued by the CVC is nullified qua the petitioner for want of valid justification or acceptable reason. As a sequel to the above, the order dated 8.3.2010 (P-13) also falls and is set aside. The writ petition stands allowed with costs of Rs.20,000/- against respondent No.2 which was served but did not defend the action or contest the case after creating the cause of action.

(39) Resultantly, the Central Government-respondent No.1 is directed to re-consider the matter afresh by itself as the disciplinary authority with respect to grant or refusal to grant sanction of prosecution of the petitioner by ignoring impugned OM dated 24.4.2008 (P-9) and the time limit of two months fixed therein which is held unreasonable even assuming arguendo that the OM is sustainable. However, till such time the final decision is not taken on re-consideration of the entire matter, the interim mandamus dated 19.1.2011 issued by this Court will continue to operate and the criminal proceedings pending before the trial court against the petitioner would remain deferred till then and for the next 30 days thereafter calculated from the date of communication of the order, to enable the petitioner to approach this Court in case the decision goes against him.

J.S. Mehndiratta