

2026 LiveLaw (SC) 97

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

VIKRAM NATH; J., SANDEEP MEHTA; J.

WRIT PETITION(CIVIL) NO(S). 1180 OF 2025; JANUARY 30, 2026

CAPTAIN PRAMOD KUMAR BAJAJ *versus* UNION OF INDIA AND ANR.

Constitution of India – Article 32 – Writ Jurisdiction – Principles of Natural Justice – Doctrine of Bias – Selection Process – Search-cum-Selection Committee (SCSC) – Bias and Malafides in Service Matters - The Supreme Court allowed the writ petition, setting aside the SCSC's decision to reject the petitioner's candidature - held that the inclusion of an officer as a member of the selection committee who had been personally arraigned as a contemnor by the candidate in the same dispute violates the principles of natural justice - Such participation creates a "reasonable apprehension of bias" in the mind of the candidate, rendering the decision-making process vulnerable and a nullity, regardless of whether actual bias is proven – Noted that justice must not only be done but must manifestly be seen to be done, and authorities must appear to act fairly to preserve public confidence in the impartiality of the selection process – Supreme Court directed the DoPT to convene a fresh SCSC meeting within four weeks, excluding "the Officer" in question, and imposed costs of Rs. 5 lakhs on the respondents for "rank procrastination" and "deliberate obstacles" bordering on vendetta. [*Relied on State of Gujarat v. R.A. Mehta, (2013) 3 SCC 1; A.K. Kraipak v. Union of India, (1969) 2 SCC 262; S. Parthasarathi v. State of A.P., (1974) 3 SCC 459; Paras 41-46]*]

For Petitioner(s): Petitioner-in-person

For Respondent(s): Mr. Tushar Mehta Ld, Solicitor General (Not Present) Mr. N. Venkataraman, A.S.G. (Not Present) Mr. V.C.Bharathi, Adv. (Not Present) Mr. Mayank Pandey, Adv. (Not Present) Mr. Rajat Nair, Adv. (Not Present) Mr. Prakash Singh Negi, Adv. (Not Present) Mr. Aman Mehta, Adv. (Not Present) Dr. N. Visakamurthy, AOR (Not Present)

J U D G M E N T

Mehta, J.

1. Heard.
2. The present case discloses a sordid tale of targeted departmental vendetta, full of *mala fide* actions and protracted persecution that has compelled the petitioner to invoke the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India.
3. The petitioner before us is a former member of the Armed Forces who was released from service on account of physical disability suffered during the course of the Army operations.
4. Pursuant to his release, the petitioner appeared and succeeded in the Civil Services Examination. He was appointed to the Indian Revenue Service against an unreserved category post way back in the year 1990. Having earned an unblemished service record, including promotion to the high position of Commissioner of Income Tax in the year 2012, the petitioner applied for the post of Member (Accountant), ITAT, and was interviewed by an SCSC headed by an Hon'ble sitting Judge of this Court. The Committee evaluated the petitioner and ranked him first on the all-India merit list. It appears that this success of the petitioner did not go down well with the Officers of the respondents. The chain of events which transpired as a sequel have led to the filing of the present writ petition under Article 32 of the Constitution of India.

5. The present writ petition has been instituted by the petitioner, *inter alia*, seeking the following reliefs: -

i. "Issue a writ of certiorari, mandamus or any other appropriate writ, order, or direction or declaration for re-constitution of the Search Cum Selection Committee to consider the case of Petitioner within four weeks in terms of orders dated 15.11.2017 and 09.09.2020 in SLP(C) No.22596/2017 and M.A. 2557/2019, so that appointing authority can take a decision within two weeks thereafter,

ii. Issue a writ of certiorari, mandamus or any other appropriate writ, order, or direction or declaration after summoning the complete file, so that justice is done to the Petitioner, who has been recommended 11 years ago by the SCSC (2013 Notification) and faced 3 SCSCs subsequently, in accordance with the judgment of this Hon'ble Court dated 15.11.2017 in S.L.P. Civil No. 22596/2017"

BACKGROUND

6. The present matter has a chequered history as it has traversed multiple rounds of litigation, which renders it necessary to set out the factual background in some detail. Accordingly, the facts relevant and necessary for the disposal of the present writ petition are noted hereinbelow.

A. Service Background and Initial Selection Process

7. The petitioner was inducted as a Permanent Commissioned Officer in the Indian Army in the year 1980. During the course of Army operations, he suffered a physical disability and was, consequently, demobilised and released from service on account of disability attributable to active military operations. Thereafter, he qualified the Civil Services Examination in the year 1989 and was appointed to the Indian Revenue Service in the general category, being allocated to the 1990 batch. In the course of his service in the Department of Income Tax, he held various posts and was promoted to higher ranks, including promotion to the post of Commissioner on 12th January, 2012, while maintaining an unblemished service record throughout his tenure.

8. In the year 2014, the petitioner applied for appointment to the post of Member (Accountant), Income Tax Appellate Tribunal¹, and was called for an interview before the Search-cum-Selection Committee² chaired by Hon'ble Shri Justice T.S. Thakur (as he then was), along with the Additional Solicitor General, the Law Secretary, and the President of the ITAT as its members.

9. Upon evaluation of all candidates, the SCSC placed the petitioner at All India Rank One. However, notwithstanding the said recommendation, the respondents did not issue a formal letter of appointment on the premise that certain adverse Intelligence Bureau³ inputs were available against the petitioner, which allegedly emanated from litigation between the petitioner and his estranged spouse.

10. In the year 2016, the petitioner was also empaneled by the Appointments Committee of the Cabinet⁴ for appointment as Joint Secretary to the Government of India.

B. Litigation Arising from the Withholding of Appointment

11. Aggrieved by the non-issuance of a formal appointment letter despite being placed at the top of the merit list by the SCSC, the petitioner approached the Central

¹ For short, 'ITAT'.

² For short, 'SCSC'.

³ For short, 'IB'.

⁴ For short, 'ACC'.

Administrative Tribunal⁵, Lucknow Bench, by filing Original Application No. 95 of 2016, which came to be allowed *vide* judgment dated 10th February, 2017, directing the respondents to place the alleged IB report before the SCSC within a period of one month, for it to take a final view on the petitioner's claim for appointment to the subject post.

12. Pursuant thereto, the re-constituted SCSC convened its meeting and, *vide* its opinion dated 26th April, 2018, rejected the fetters created by the respondents and reiterated the merit position of the petitioner for appointment as Member (Accountant), ITAT.

13. Meanwhile, the respondents assailed the order dated 10th February, 2017, passed by the Tribunal by filing Writ Petition No.8648 of 2017 before the High Court of Judicature at Allahabad, Lucknow Bench⁶. The High Court, *vide* order dated 30th May, 2017, dismissed the writ petition and directed the respondents to act in accordance with the directions issued by the Tribunal and to conclude the process of reconsideration of the petitioner's candidature within a period of three months.

14. Aggrieved by the order dated 30th May, 2017, passed by the High Court, the respondents approached this Court by filing SLP (Civil) No. 22596 of 2017. The said Special Leave Petition came to be dismissed *vide* order dated 15th November, 2017, with a direction to comply with the order passed by the High Court.

C. Vigilance, Disciplinary Proceedings, and Compulsory Retirement

15. On 29th November, 2017, a vigilance inspection was conducted in the office of the petitioner. Consequent thereto, the respondents issued a show cause notice dated 31st January, 2018 to the petitioner. Even prior thereto, on 21st January, 2018, the vigilance clearance earlier granted in favour of the petitioner was withheld. The petitioner assailed both the aforesaid actions by filing separate OAs before the Tribunal. The Tribunal, by an interim order, observed that the issuance of the show cause notice shall not impede or influence the petitioner's consideration for appointment to the post of Member (Accountant), ITAT. By a subsequent interim order dated 4th May, 2018, the Tribunal further provided that withholding of vigilance clearance would also not stand in the way of such appointment. A second SLP preferred by the respondents against the interim relief granted by the Tribunal, as affirmed by the High Court in Writ Petition (Civil) Nos. 22179-22187 of 2018 *vide* order dated 6th August, 2018, came to be dismissed by this Court on 29th March, 2019.

16. In the interregnum, on 11th April, 2018, the petitioner was placed in the "Agreed List", being a list of Gazetted Officers of suspected integrity maintained by the Department. Aggrieved by the action of the respondents in placing his name in the "Agreed List", the petitioner approached the Tribunal for the third time, wherein an interim order was granted in his favour. Ultimately, by a common judgment dated 6th March, 2019, the Tribunal allowed O.A. No. 137 of 2018 and O.A. No. 279 of 2018, quashing the inclusion of the petitioner's name in the "Agreed List" along with the consequential proceedings, so also the decision of the respondents denying him vigilance clearance. The Tribunal further directed the respondents to forward the name of the petitioner to the competent authority for selection and appointment to the post of Member (Accountant), ITAT. The respondents remained adamant and did not comply with the said judgment and again preferred a writ

⁵ Hereinafter, referred to as the 'Tribunal'.

⁶ Hereinafter, referred to as the 'High Court'.

petition before the High Court. Admittedly, no interim order staying the operation of the judgment dated 6th March, 2019 was granted by the High Court.

17. Aggrieved by the continued non-compliance of the order dated 30th May, 2017, passed by the High Court in his favour, as well as the directions issued by the Tribunal *vide* its common judgment dated 6th March, 2019, in O.A. No. 137 of 2018 and O.A. No. 279 of 2018, the petitioner initiated contempt proceedings, being Contempt Petition No. 2681 of 2017 before the High Court and Contempt Case Nos. 15 of 2019 and 26 of 2019 before the Tribunal, respectively. Despite the judicial mandate that the petitioner's name be forwarded to the appointing authority within a period of two weeks, the respondents failed to comply, and their application seeking extension of time was rejected by the Tribunal *vide* order dated 8th April, 2019. The High Court *vide* order dated 13th August, 2019, permitted impleadment of the then Chairman of the Central Board of Direct Taxes⁷ and issued notice to show cause as to why such officer should not be proceeded against for willful disobedience of the order dated 30th May, 2017. Similar notices were issued by the Tribunal for non-compliance of the orders dated 30th May, 2017, and 6th March, 2019.

18. In the proceedings before the High Court, the respondents, with a clear intention of avoiding compliance, continued to seek adjournments on the premise that steps were being taken to forward the petitioner's name to the ACC for processing his appointment as Member (Accountant), ITAT. Ultimately, on 31st May, 2019, the respondents were granted a final opportunity to effect compliance and, at their request, the matter was adjourned to 9th July, 2019.

19. In the interregnum, the respondents issued a charge memorandum dated 17th June, 2019, and placed the petitioner under suspension on 1st July, 2019.

20. In July, 2019, a Departmental Promotion Committee convened by the Union Public Service Commission considered the case of the petitioner for promotion to the post of Principal Commissioner. However, the decision in respect of the petitioner was kept in a sealed cover on account of the pending disciplinary proceedings. The petitioner had, in the meantime, approached the High Court by filing a writ petition challenging the charge memorandum, wherein interim protection was granted in his favour.

21. While the said proceedings were still pending, the respondents, by resorting to Rule 56(j) of the Fundamental Rules, proceeded to compulsorily retire the petitioner *vide* order dated 27th September, 2019, barely three months prior to his superannuation, which was due in January, 2020. Thereafter, the list of promotions to the post of Principal Commissioner was published on 11th November, 2019, by which time the petitioner stood excluded from consideration.

22. As a consequence of the issuance of the charge memorandum and pursuant to the action of compulsory retirement initiated by the CBDT, the Department of Personnel and Training⁸ in a façade showing compliance of the Tribunal's order dated 6th March, 2019, issued an Office Memorandum dated 9th September, 2019, directing that the petitioner's file for appointment as Member (Accountant), ITAT be placed afresh before the SCSC.

23. An office memorandum was issued on 9th September, 2019, directing Respondent No. 2 (Secretary, Ministry of Law and Justice) to place the matter relating to the issuance of the charge memorandum and the action under Rule 56(j) before the SCSC afresh, in terms of the directions of the appointing authority. This Court, *vide* order dated 9th January,

⁷ For short, 'CBDT'.

⁸ For short, 'DoPT'.

2020 passed in Miscellaneous Application No.2557 of 2019 in Special Leave Petition (Civil) No.22596 of 2017, observed that the respondents would be at liberty to consider all relevant material, including material that had emerged after 29th August, 2014, insofar as the same bore upon the suitability of the petitioner for appointment as Member (Accountant), ITAT.

24. Further directions were issued granting liberty to the petitioner to challenge the aforesaid actions of the respondents in accordance with law.

25. Pursuant to the notice issued by the respondents, the petitioner again appeared before the third SCSC. The Committee, however, deferred consideration of the petitioner's candidature until judicial scrutiny of the two pending actions, namely the charge memorandum and the order of compulsory retirement under Rule 56(j), was concluded.

D. Judicial Scrutiny of Disciplinary Action and Consequential Proceedings

26. The petitioner challenged the order of compulsory retirement dated 27th September, 2019, as also the subsequent order dated 2nd January, 2020, passed by the Representation Committee declining to interfere with the said action, by approaching the Central Administrative Tribunal, Principal Bench, New Delhi by filing an Original Application, being OA No.703 of 2020. The said Original Application came to be dismissed *vide* judgment dated 9th December, 2020, which was upheld by the High Court *vide* judgment dated 31st May, 2022.

27. Aggrieved by the judgment dated 31st May, 2022 passed by the High Court, affirming the judgment dated 9th December, 2020 rendered by the CAT, the petitioner approached this Court by filing Civil Appeal No. 6161 of 2022. The said appeal came to be allowed by this Court *vide* judgment dated 3rd March, 2023, with scathing findings and observations on the conduct of the respondents which are extracted hereinbelow: -

"36. In the teeth of the series of orders passed by the Tribunal and the High Court in favour of the appellant, the respondents elected to withhold his vigilance clearance, thereby compelling the appellant to file contempt petitions against the concerned officers for non-compliance of the orders passed. Both, the High Court as well as the Tribunal, issued notices for wilful disobedience of the orders passed. In the proceedings before the High Court, on the one hand, the respondents kept seeking adjournments on the ground that steps were being taken to forward the appellant's name to the ACC for being processed for his appointment as Member, ITAT, till as late as on 31st May 2019 on which date they were granted one last opportunity for making compliances and at their request, the matter was adjourned to 9th July 2019 and on the other hand, the respondents slapped the appellant with a Charge Memorandum dated 17th June 2019 and suspended him on 1st July, 2019.

37. Having regard to the fact that the respondents did not take the disciplinary proceedings initiated against the appellant to its logical conclusion and instead issued an order compulsorily retiring him, this Court does not deem it expedient to delve into the allegations levelled in the said Charge Memorandum; all the same, we have cursorily gone through the Charge Memorandum that mentions three charges – one alleging that the appellant failed to seek permission from the department to purchase a flat in relation to the matrimonial dispute between him and his estranged wife and the second one is in respect of the allegation of bigamy levelled against him by his estranged wife. We have already noted earlier that during the course of the matrimonial dispute, the parties had arrived at a settlement and the flat that was agreed to be given to the wife, was not purchased by the appellant but by his brother, which fact is amply borne out from the documents placed on record. The matrimonial dispute between the parties stood closed on a decree of divorce being granted on the basis of mutual consent. That the respondents were also cognizant of the said fact, is apparent from the contents of O.M. dated 15th July, 2015 which records inter alia that the said allegations levelled by the wife had not been established. The third

charge was relating to the appellant having attended Court hearings without sanctioned leave. However, the disciplinary proceedings initiated against the appellant on 17th July, 2019 were abandoned by the respondents on the order of compulsory retirement being passed against him in less than three months reckoned therefrom, on 27th September, 2019.

38. The appellant has made allegations of institutional bias and malice against the respondents on the plea that the Chairman, CBDT who was a Member of the Review Committee, was facing three contempt proceedings relating to the appellant's service dispute, wherein notices had been issued by the High Court as well as the Tribunal. There is no doubt that rule of law is the very foundation of a well-governed society and the presence of bias or malafides in the system of governance would strike at the very foundation of the values of a regulated social order. The law relating to mala fide exercise of power has been the subject matter of a catena of decisions [Refer: S. Pratap Singh v. State of Punjab²³; Jaichand Lal Sethia v. State of W.B²⁴; J.D. Srivastava v. State of M.P And Others²⁵; and Express Newspapers Pvt. Ltd. And Others v. Union of India And Others²⁶]. It has been repeatedly held that any exercise of power that exceeds the parameters prescribed by law or is motivated on account of extraneous or irrelevant factors or is driven by malicious intent or is on the face of it, so patently arbitrary that it cannot withstand judicial scrutiny, must be struck down. In the instant case, though the appellant has levelled allegations of institutional bias and prejudice against the respondents, particularly against the then Chairman, CBDT who was a Member of the Review Committee, the said officer was not joined by the appellant as a party before the Tribunal or the High Court, for him to have had an opportunity to clarify his stand by filing a counter affidavit. Hence, these allegations cannot be looked into by this Court.

39. Dehors the aforesaid allegations of institutional bias and malice, having perused the material placed on record, we find merit in the other grounds taken by the appellant. It is noticed that though FR 56(j) contemplates that the respondents have an absolute right to retire a government servant in public interest and such an order could have been passed against the appellant any time after he had attained the age of fifty years, the respondents did not take any such decision till the very fag end of his career. The impugned order of compulsory retirement was passed in this case on 27th September, 2019 whereas the appellant was to superannuate in ordinary course in January, 2020. There appears an apparent contradiction in the approach of the respondents who had till as late as in July, 2019 continued to grade the appellant as 'Outstanding' and had assessed his integrity as 'Beyond doubt'. But in less than three months reckoned therefrom, the respondents had turned turtle to arrive at the conclusion that he deserved to be compulsorily retired. If the appellant was worthy of being continued in service for little short of a decade after he had attained the age of 50 years and of being granted an overall grade of 9 on the scale of 1 - 10 on 31st July, 2019 it has not been shown as to what had transpired thereafter that made the respondents resort to FR 56(j) and invoke the public interest doctrine to compulsorily retire him with just three months of service left for his retirement, in routine. In such a case, this Court is inclined to pierce the smoke screen and on doing so, we are of the firm view that the order of compulsory retirement in the given facts and circumstances of the case cannot be sustained. The said order is punitive in nature and was passed to short-circuit the disciplinary proceedings pending against the appellant and ensure his immediate removal. The impugned order passed by the respondents does not pass muster as it fails to satisfy the underlying test of serving the interest of the public.

40. In view of the above discussion, it is deemed appropriate to reverse the impugned judgment dated 31st May, 2022 and quash and set aside the order dated 27th September, 2019 passed by the respondents, compulsorily retiring the appellant. Resultantly, the adverse consequences if any, flowing from the said order of compulsory retirement imposed on the appellant, are also set aside. The appeal is allowed and disposed of on the aforesaid terms while leaving the parties to bear their own costs."

28. On 15th March, 2024, the respondents issued a fresh notification inviting applications from aspiring candidates for appointment as Members of the ITAT for a tenure

of four years. The petitioner thereafter made repeated representations to the then Secretary⁹, Department of Revenue, seeking implementation of the judgment dated 3rd March, 2023 passed by this Court. However, no action ensued. In these circumstances, the petitioner was constrained to approach this Court by filing Contempt Petition (Civil) No. 210 of 2024, titled “**Capt. Pramod Kumar Bajaj v. XXX and Anr**”¹⁰.

29. This Court, *vide* order dated 29th July, 2024, summoned “the Officer”, being the then Revenue Secretary, in the contempt proceedings for deliberate defiance of the judgment passed by this Court. The Officer tendered an unconditional written apology in the aforesaid contempt proceedings. *Vide* order dated 5th August, 2024, this Court was pleased to direct the respondents to release all consequential benefits in favour of the petitioner on or before 15th August, 2024.

30. Meanwhile, the CBDT *suo motu* dropped the charge memorandum issued to the petitioner *vide* proceedings dated 2nd August, 2024.

31. However, no consequential order offering appointment to the petitioner as Member (Accountant), ITAT was issued. Instead, the petitioner was again called upon to appear before the fourth reconstituted SCSC, chaired by an Hon’ble sitting Judge of this Court as per the prescribed procedure.

E. Fourth Search-cum-Selection Committee and Present Writ Petition

32. Upon appearing before the fourth SCSC in its meeting held on 1st September, 2024, the petitioner was surprised to find that “the Officer” who had earlier been actively involved in matter relating to the petitioner’s protracted struggle for appointment and had faced contempt proceedings initiated by the petitioner (Contempt Petition (C) No.210/2024), was included as a member of the Committee.

33. Thereafter, by proceedings communicated in November, 2025, the candidature of the petitioner was rejected by the Committee.

34. Aggrieved by the minutes of the SCSC dated 1st September, 2024, which were received by the petitioner in November, 2025, the petitioner has approached this Court by filing the present writ petition under Article 32 of the Constitution of India.

35. Notice was issued to the respondents on 2nd December, 2025, returnable on 16th December, 2025 on which date appearance was entered on behalf of the Union of India, and two weeks’ time was sought to obtain instructions and to file a counter affidavit, if necessary. It was made clear on the very date that no further time would be granted for the said purpose, keeping in view the fact that, if the petitioner were to be considered for appointment as a Member of the ITAT at this stage, he would be left with a very short tenure. Despite service of notice and grant of opportunity, neither a counter affidavit was filed nor did anyone appear on behalf of the respondents when the matter was taken up on 15th January, 2026. Accordingly, we have heard the petitioner, who appeared in-person, and have carefully perused the material available on record.

DISCUSSION AND ANALYSIS

36. As per the factual matrix noted above, at every stage of proceedings, the respondents have deliberately created hurdles in the path of the petitioner by either putting up cooked-up charges or failing to ensure compliance with the orders passed by various *fora*. Even in the present case, the rank procrastination exhibited by the respondents in

⁹ Hereinafter, referred to as “the Officer”.

¹⁰ Name of the Officer has been screened as he holds a sensitive position.

not filing a counter affidavit inspite of the specific direction given by this Court, manifests that by not instructing the counsel to file the counter affidavit, the departmental Officers desired to waste precious time and deprive the petitioner of having access to the slender window which remains available as he is approaching the age of 70 years being the outer age limit for the assignment. Even after the judgment was reserved on 15th January, 2026, there has been no attempt on behalf of the respondents to make any mention or to seek leave to file a counter affidavit so as to traverse the averments set out in the writ petition.

37. The petitioner in the writ petition has attributed serious bias, *mala fides*, and personal vendetta to the departmental officers. It is asserted that the petitioner was continuously and repeatedly treated with vindictive approach inspite of having ranked first in the initial evaluation by the SCSC constituted in the year 2014. The Department continued to procrastinate, and created intentional hurdles in the appointment of the petitioner. Not only this, roadblocks were created and his subsisting service as a Senior Officer in the Income Tax Department was cut short by the action of compulsory retirement which was later struck down by this Court. This attribution and perception of bias pleaded in the writ petition remains uncontroverted, as no reply or counter affidavit has been filed on behalf of the respondents.

38. The petitioner fervently contended that one of the members of the fourth SCSC was none other than “the Officer”, who had earlier been a respondent in contempt proceedings instituted by the petitioner before this Court. He contended that owing to his prior prosecution in contempt, “the Officer” harboured animus and a biased attitude against the petitioner.

39. The petitioner further contended that the fact that the decision of the SCSC is supposed to have been taken with a consensus, the presence of “the Officer” as a member of the Committee gave rise to a genuine apprehension as regards the fairness of the process, and particularly in view of the fact that on two earlier occasions the SCSCs had recommended the petitioner for appointment with high evaluation. Repeated vindictive actions and egoistic approach was adopted by the Departmental officers who persecuted the petitioner on baseless charges, and in a gross arbitrary manner, which conclusion has been recorded by this Court in the judgment dated 3rd March, 2023 (*supra*). In this backdrop, it was urged that the presence and participation of “the Officer” in the composition of the SCSC, which resolved not to recommend the petitioner, bolsters the genuine and sustainable apprehension expressed by the petitioner that the decision-making process was biased from the core.

40. Having thoroughly considered the material on record and more particularly, the observations made by this Court in the judgment dated 3rd March, 2023, we are overwhelmingly convinced that the petitioner has been subjected to grave injustice and rank highhandedness by the respondents by intentionally hampering and impeding his candidature for appointment as Member (Accountant), ITAT. Notwithstanding his promotion to the post of Commissioner of Income Tax and imminent probability for further promotion, a trumped-up baseless charge memorandum was issued to him, which was ultimately dropped. However, taking shelter behind this subterfuge, the petitioner was compulsorily retired. The order of compulsory retirement was ultimately set aside by this Court in an earlier round of litigation *vide* the judgment dated 3rd March, 2023 (*supra*), recording strong observations on the high-handed and *mala fide* manner in which the departmental action had been undertaken.

41. Though considering the fact that “the Officer” now holds a sensitive position, we refrain from making any observations on his role in the entire sequence of events leading

to the present litigation. Nonetheless, we feel that the inclusion of “the Officer” as a member of the SCSC, which rejected the petitioner’s candidature, has undoubtedly created a genuine perception of bias in the mind of the petitioner and was in gross violation of the principles of natural justice. “The Officer” had earlier faced contempt proceedings at the instance of the petitioner in relation to the very same ongoing tussle, and in such circumstances, a reasonable apprehension as to his impartiality and independence in the process of selection of the petitioner as Member (Accountant), ITAT, is fortified. True it is, that “the Officer” was only one among the members of the Committee; however, his presence and participation in the selection process, inspite of his arraignment as a contemnor in the contempt proceedings initiated at the instance of the petitioner, was not justified and rendered the decision-making process vulnerable on the touchstone of the principles of natural justice and gives rise to a reasonable apprehension of bias.

42. Reference in this regard may usefully be made to the observations of this Court in ***State of Gujarat v. R.A. Mehta***¹¹ on the doctrine of bias, which encapsulate the principles governing the present controversy. The relevant observations made by this Court in the said judgment are reproduced hereinbelow: -

“58. Absence of bias can be defined as the total absence of any preconceived notions in the mind of the authority/Judge, and in the absence of such a situation it is impossible to expect a fair deal/trial and no one would therefore see any point in holding/participating in one as it would serve no purpose. The Judge/authority must be able to think dispassionately and submerge any private feelings with respect to each aspect of the case. **The apprehension of bias must be reasonable i.e. which a reasonable person would be likely to entertain. Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim *nemo debet esse iudex in propria causa*. It applies only when the interest attributed to an individual is such so as to tempt him to make a decision in favour of, or to further his own cause. There may not be a case of actual bias, or an apprehension to the effect that the matter most certainly will not be decided or dealt with impartially but where the circumstances are such so as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision, the same is sufficient to invoke the doctrine of bias.**

59. **In the event that actual proof of prejudice is available, the same will naturally make the case of a party much stronger, but the availability of such proof is not a necessary precondition, for what is relevant, is actually the reasonableness of the apprehension in this regard in the mind of such party. In case such apprehension exists the trial/judgment/order, etc. would stand vitiated for want of impartiality and such judgment/order becomes a nullity. The trial becomes *coram non iudice*.**

60. While deciding upon such an issue, the court must examine the facts and circumstances of the case and examine the matter from the viewpoint of the people at large. The question as regards “whether or not a real likelihood of bias exists must be determined on the basis of probabilities that are inferred from the circumstances of the case by the court objectively or upon the basis of the impression that may reasonably be left upon the minds of those aggrieved or the public at large”. (*Vide S. Parthasarathi v. State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580 : AIR 1973 SC 2701], *State of Punjab v. V.K. Khanna* [(2001) 2 SCC 330: 2001 SCC (L&S) 1010: AIR 2001 SC 343], *N.K. Bajpai v. Union of India* [(2012) 4 SCC 653] and *State of Punjab v. Davinder Pal Singh Bhullar* [(2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034: AIR 2012 SC 364].

[Emphasis supplied]

The aforesaid observations made by this Court makes it clear that an authority exercising adjudicatory or selection functions must not only act fairly but must also appear to act fairly, for justice must manifestly be seen to be done. The rule against bias would certainly

¹¹ (2013) 3 SCC 1.

be attracted where the person/authority intrinsically involved in the evaluation process has a personal connection with, personal interest in, or prior involvement in the matter under consideration, or has earlier taken a position which he may be interested in sustaining. The doctrine is applied not only to avoid the possibility of a partial decision but also to preserve public confidence in the impartiality of the decision-making process.

43. We may also gainfully refer to the judgment of the High Court of Judicature at Allahabad in *Km. Shailja Srivastava v. Banaras Hindu University*¹², wherein the following observations were made: -

“15. The allegations of the petitioners are that the proceedings before the Examination Grievance Board as well as Central Grievance Board are both vitiated. Before dealing with the allegations regarding the Examination Grievance Board I may first mention that the proceedings before the Central Grievance Board were vitiated because of the presence of respondent No. 4 in the said Board. In paragraph 19 of the counter affidavit of the University it is mentioned that the respondent No. 4 was a member of the Central Grievance Board which considered the petitioners representation. Annexure CA-1 to the counter affidavit of respondent No. 4 also mentions that the respondent No. 2 was present in the meeting of the Central Grievance Board. In my opinion, the presence of the respondent No. 4 on the Central Grievance Board completely vitiates the proceedings of the said Board since the main allegations of the petitioners were against respondent No. 4. In this connection it may be mentioned that by now it is well established principle of Administrative Law that not only should justice be done but should appear to be done. Since the main allegations of the petitioners were against respondent No. 4, she should have disassociated herself from the proceeding of the Central Grievance Board, in this connection I may mention the relevant decisions on this point.

16. In A.K. Kraipak v. Union of India, [(1969) 2 SCC 262 : AIR 1970 SC 150.] the Hon'ble Supreme Court held that the presence of a candidate for selection as a member of the Selection Board vitiates the proceeding of the Board. In that case the Acting Chief Conservator of Forests Naquisbund, who was himself a candidate for selection was a member of the Selection Board. The Hon'ble Supreme Court held that the entire proceedings for selection were vitiated on this account. Although each member of the Selection Board other than Naquisbund filed affidavits in the court swearing that Naquisbund had in no manner influenced their decision in making the selection it was nevertheless observed by the court “in a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge, his bias is likely to operate in a subtle manner. It is no wonder that the other members of the Selection Board are unaware to the extent to which his opinion influenced their conclusion.” The Court also held that the rules of natural justice apply not only to quasi-judicial, proceedings but also to certain administrative proceedings.

17. In G. Sarana v. Lucknow University, [(1976) 3 SCC 585 : AIR 1976 SC 2428.] it was observed “what has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of the Selection Board the members do not function as computers. Each member of the group of Board is bound to influence the other, more so, if the person concerned is a person with special knowledge. His bias is likely to operate in a subtle manner.” In paragraph 13 of the said decision the Hon'ble Supreme Court has quoted professor S.A. De Smith “the case law on the point is thin, but on principle it was seen that where a report on determination lacking final effect may nevertheless have a seriously judicial effect on the legally protected interest of individuals (e.g. that it is a

¹² 1992 SCC OnLine All 465

necessary pre-requisite of the final order) and the person making the report or preliminary decision must not be affected by the interest or likelihood of bias.

18. In *J. Mahapatra & Co. v. State of Orissa*, [(1984) 4 SCC 103 : AIR 1984 SC 1572.] the selection of books for school and college libraries was held to be vitiated because the Selection Committee included a person who was the author of the books which had been submitted for selection by the committee. **19.** In *K. Chellaih v. Chiamman*, [AIR 1973 Mad 122.] the Chairman of the Board of the Industrial Finance Corporation had passed the dismissal order against the petitioner, and the said Chairman was a member of the Board which considered the appeal against the dismissal order. It was held that the appellate decision was vitiated.

20. In *Kirti Deshmankar v. Union of India*, [(1991) 1 SCC 104.] it was held that the presence of the mother-in-law of the selected candidate on the selection committee vitiated the selection. It was also held therein, following the decision in *Ashok Kumar Yadava v. State of Haryana*, [(1985) 4 SCC 417.] that it was not necessary to establish actual bias, and that if it could be shown that there was reasonable likelihood of bias, the selection process was vitiated.

21. In *Halsbury's Laws of England*, 4th Ed. Vol. 1, page 87 (para 70) it has been "if one of the adjudicators has a direct pecuniary interest in the issue, the proceedings will be set aside even though none of his fellow adjudicators was thus disqualified; and it appears that the same principle applies where one adjudicator is subject to disqualification for likelihood of bias. In such cases the court will not consider whether the disqualified person did in fact influence the decision."

22. In *Rex v. Darnsley, M.B.S.*, [1976 (3) All ER 452.] it was observed "it must be remembered that in application for certiorari the applicant knows very little of what has happened behind the scene. He only knows that the decision has been taken which is adverse to him, and he complains of it. His statement of grounds should not be treated as rigidly as a pleading in an ordinary civil action."

23. From the above decisions the following principles relating to the rule of bias emerge:

(1) It is not necessary to establish actual bias. A reasonable apprehension or likelihood of bias is sufficient to vitiate the proceedings. As stated by Garner in his Administrative Law "Turning our attention to the substance of the rule relating to bias, the first point to emphasise is that it is not necessary to prove actual bias. The natural justice bias rule looks to external appearances rather than the proof of actual improper exercise of power". In this connection Geoffrey Flick in his book Natural Justice has mentioned "There are two established lines of authority, one to the effect that an interest will disqualify if it gives rise to a real likelihood of bias, the other to the effect that all that is needed is a reasonable suspicion of bias. It is the reasonable suspicion test which currently seems to hold sway." It may also be pointed out here that in the case of *Kirti Deshmankar* (Supra) the Hon'ble Supreme Court has used the words "reasonable likelihood of bias", and not "real likelihood of bias. This distinction between real likelihood and reasonable likelihood is important, and in my opinion, even if there is no real likelihood of bias, a reasonable likelihood from the point of view of the petitioners will vitiate the proceedings. In *G. Sarana's case* (supra) the test laid down was "Whether there is a substantial possibility of bias animating the mind of the member against the aggrieved party."

(2) Even if one member of the selection committee suffers from the disqualification of the rule of bias, then the entire selection or proceeding is vitiated because it is not possible to know as to what extent such disqualified member influenced the others.

(3) Where a person is disqualified due to rule of bias, he should disassociate himself from the proceedings.

(4) Bias in a member of a recommendatory body will also vitiate the proceedings."

[Emphasis supplied]

44. The rule of law constitutes the foundation of a well-governed society, and the shadow of bias or *mala fides* in the exercise of power concerning public functions strikes at the very root of a regulated social order. The law relating to *mala fide* exercise of power has been the subject matter of discussion in a catena of decisions of this Court.¹³ It has been consistently held that where statutory or administrative power is exercised for purposes extraneous to those for which it is conferred, or is influenced by irrelevant considerations, or is actuated by malice in law, such exercise cannot be sustained. Judicial review in such circumstances is directed not merely at the decision but at the decision-making process itself.

45. Further, in the absence of any counter affidavit on behalf of the respondents, the averments made in the writ petition have remained uncontroverted. In such circumstances, this Court is constrained to proceed on the basis that all relevant facets of the case may not have been placed before the SCSC at the time when the petitioner's candidature was considered. There is a genuine possibility that the fact of "the Officer" having earlier faced contempt proceedings at the instance of the petitioner was not brought to the notice of the Committee. In the interest of fairness and to dispel any reasonable apprehension of bias, it would have been appropriate for "the Officer" to have recused from the evaluation process on his own. His failure to do so fortifies the aspersion of bias.

46. Consequently, the minutes of the meeting of the SCSC held on 1st September, 2024, insofar as they relate to the petitioner and whereby, he was not recommended for appointment as Member (Accountant), ITAT, are hereby set aside. The respondent No.1-DoPT shall ensure that a fresh meeting of the SCSC is convened within a period of four weeks from today to consider the candidature of the petitioner for the above post, ensuring exclusion of "the Officer" from the said proceedings. The outcome of the SCSC proceedings shall be communicated to the petitioner within a further period of two weeks thereafter.

47. In view of the rank procrastination shown by the respondents in these proceedings and the deliberate obstacles created by them in the path of the petitioner bordering to vendetta and as the allegations set out in the writ petition remain untraversed, we impose cost quantified at Rs.5 lakhs on the respondents. The cost shall be deposited in the Registry of this Court within a period of four weeks from today and the same shall thereafter be paid to the petitioner.

48. The writ petition is disposed of accordingly.

49. Pending application(s), if any, shall stand disposed of.

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¹³ *Pratap Singh v. State of Punjab*, 1963 SCC OnLine SC 10; *Jaichand Lal Sethia v. State of W.B.*, 1966 SCC OnLine SC 96; *E.P. Royappa v. State of Tamil Nadu*, 1974 AIR 555; *Jaichand Lal Sethia v. State of W.B.*, 1966 SCC OnLine SC 96.