

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 391 OF 1998.
Cuttack, this the 29th day of April 2003.

SRI DILIP KUMAR MOHAPATRA,

APPLICANT.

:VERSUS:

UNION OF INDIA & OTHERS.

RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? Yes
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

(MANORANJAN MCHANTY)
MEMBER(JUDICIAL)

29/04/03

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 391 OF 1998.
Cuttack, this the 29th day of APRIL, 2003.

C O R A M:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.)

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SRI DILIP KUMAR MOHAPATRA, I.P.S,
Director-Cum-Additional D.G. and I.G.
of Police, Intelligence, Orissa, Cuttack.

.... APPLICANT.

By legal practitioner : M/s. B. S. Tripathy, N. Sarkar, Advocates.

:VRS.:

1. Union of India represented through its Secretary to Government of India, Ministry of Civil Aviation, 'B' Block, Rajiv Gandhi Bhawan, Safdarjung Air port, NEW DELHI-110 003.
2. Airports Authority of India, Rajiv Gandhi Bhawan, Safdarjung Air Port, New Delhi-110 003 represented by its Chairman.
3. Mr. D. V. Gupta, chairman, Rajiv Gandhi Bhawan, Safdarjung Air Port, New Delhi-110 003.
4. Mr. Ranjan Chatterjee, I.A.S, Joint Secretary to Government of India, Ministry of Civil Aviation, 'B' Block Rajiv Gandhi Bhawan, Safdarjung Air Port, New Delhi-110 003.
5. Mr. S. P. Singh,
Executive Director (Fin. & Accts.),
A.A.I, National Airports Division,
Rajiv Gandhi Bhawan,
Safdarjung Air Port,
New Delhi-110 003.
6. Mr. M. K. Ganeshan,
R/O, 201/B-1, Paradise Apartments,
40, Indraprastha Extension,
Patparganj, New Delhi.
7. Mr. D. C. Mehta, G.M. (Personnel), A.A.I, Rajiv Gandhi Bhawan, Safdarjung Air Port, New Delhi-110 003.
8. Secretary to Government of India, Department of Personnel, North Block, New Delhi-110 001.

... RESPONDENTS.
By legal practitioner : Mr. A. K. Bose, Senior Standing Counsel.

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O R B E R

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL) :-

Applicant, a very senior Member of the Indian Police Service was sent on deputation to the Airport Authority of India (in short 'the Authority') for a period of five years and was posted as the Chief Vigilance Officer of the said Authority. On 14.12.1992, the Applicant as Chief Vigilance Officer (in short 'C.V.O') of the Authority submitted a proposal on 11.1.1993, before the Chairman of the Authority for creation of a fund namely "SECRET SERVICE FUND" (in order to meet the expenditure in collecting information about the possible malpractices and misconduct in the Organisation) as there were no such system earlier; as is seen under Annexure-10 series to the Original Application. On 13.1.1993 the Chairman of the Authority approved the proposal and the creation of the fund also received the approval on 22.2.1993 of the Financial Member of the Authority. On 13.8.1993, the Deputy Director(Finance of the Authority issued an Office order sanctioning Rs.9,000/- as advance for the said fund/unforeseen expenses. It was clearly mentioned in the said office order dt.13.08.1993 that the re-imbursement to the said fund/expenses shall be made by

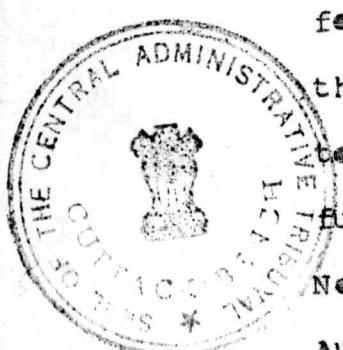
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pre-check sanction; on the basis of utilisation certificate duly countersigned by the competent authority. Accordingly, the Applicant, in course of vigilance activities had submitted all the Original documents (alongwith the utilisation certificates) before the Chairman of the Authority and after the approval of the expenses by the Chairman (by endorsing his countersignature) the same were being sent to the Finance Department of the Authority for equipment and immediately, thereafter, the Original documents were used to be defaced by the Chairman of the Authority; only to keep the sources as secret. This system was being continued till 24.10.1997 and, it is the case of the Applicant that at no point of time the said procedure was objected to, either by the competent authority or by the Finance Department of the Authority. In course of undertaking the vigilance activities in the Authority, the Applicant had to undertake several unpleasant mission. He detected some irregularities among the employees of the Authority and, therefore, the Applicant had requested the concerned employees to submit their views for the said irregularities. The applicant on 05.08.1996, called upon Mr. M. K. Ganeshan (Respondent No. 6) to show cause regarding (i) purchase of magnetrons from M/s. B. M. C. (vide supply order dated 05.10.1990) and (ii) purchase of Klytron Theyratron tubes from M/s. B. M. C. The Applicant intimated on 10.09.1997, the Joint Secretary to Government of India in the Ministry of Civil Aviation and, on 24.10.1997 to the Chairman of the Authority in the matter of irregular promotion given to Respondent No. 7 Shri D. C. Mehta. The



Applicant, on 04.12.1997, requested the Chairman of the Authority to place records of irregularities before the next meeting of the Board of Directors; for taking a final decision in regard to the disciplinary proceedings pending against some of the employees, who had been detected by the Applicant. The Applicant on 28.11.1997, recommended to initiate departmental proceedings against three officials (namely S/Sri S.H.Khan, S.P.Singh the Res. No. 5 and L.L.Krishnan) in the matter of fraudulent payment of Rs. 2,18,762/- for the treatment of Miss. Dipti Singh, D/o. Sri S.P.Singh, ED(FA). The Director(Finance and Accounts) intimated on 16.06.1997, to the Applicant (under Annexure-12) that the Board had taken a decision that there was no need for the C.V.O. to hold secret funds and, upon receiving of the said letter dated 16.06.1997, the Applicant requested to the Director(F&A) of the Authority on 18.06.1997 to furnish a copy of the said decision of the Board on item No.19.11 of the minutes of the 19th Board Meeting of the Authority. Upon receiving the said request letter of the Applicant, the Director(Finance and Accounts) of the Authority supplied the extract (of item No.19.11 from the minutes of the 19th Board meeting) wherein it was mentioned that as per the reply received from the Central Vigilance Commission and views of the Chairman of the Authority, there were no need to hold Secret Funds for discharge of normal vigilance function. On receipt of the extract of item No.19.11 of the 19th Board meeting of the Authority, the Applicant requested the Company Secretary of the Authority to supply him a copy of the reply (said to have



been submitted by the C.V.C. and placed before the Board) for further necessary action. But the same was not supplied to the Applicant. In the meantime, on 04.12.1997, the Applicant was reverted back to his parent Department, after expiry of the deputation period, after handing over the charge of C.V.O. and, on 05.12.1997, the Applicant requested the Chairman of the Authority in writing to give the last pay certificate to him (for submission of the same to the D.G. of Police of the Government of Orissa) but the same was not given to the Applicant. On the other hand, he was informed by the Authority that the LPC will be sent in due course. In the said premises, the Applicant, on 02.01.1998, wrote a letter to the Chairman of the Authority by requesting him to send his LPC; so that the Applicant could get the salary for the month of December, 1997 onwards. Under Annexure-2 dated 02.02.1998, the DIG of Orissa Police Administration sent the LPC of the Applicant (which was received by him on 20.01.1998 from the Authority) to the Director-Cum-Addl. DG of Police (intelligence) for necessary action. In Column 5 of the said LPC it was mentioned that Rs. 44,554/- are to be recovered from the Applicant; in the event he fails to submit the necessary voucher (to the Authority) immediately. After going through the said LPC, the Applicant submitted a detailed representation under Annexure-3 dated 13.02.1998 objecting the recovery suggested in the LPC; wherein, the Applicant explained in detail about the imprest amount of Rs. 44,554/-. In his reply dated 06.03.1998, the General Manager (P&T) of the Authority intimated the Applicant that



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the issues raised in his (Applicant) representation to be under examination (by the concerned Directors, at the Corporate Office of the Authority) and, that results thereon were to be intimated to the Applicant in due course of time. The Applicant on 09.06.1998, wrote a letter to the Chairman of the Authority with request to settle all the arrear dues withheld and, further requested to issue a correct LPC in favour of the Applicant. In reply, the Director (T&G) of the Authority intimated to the Applicant, on 19.06.1998, that the points/issues raised by the Applicant were yet to be examined. In the meantime, the under Secretary to the Government of India (on behalf of the Ministry of Civil Aviation and Airport Authority of India) issued a letter (on 10.06.1998) to the Secretary to Government of Orissa (in Home Department at Bhubaneswar) requesting him (the Secretary of the Home Department) to direct the Applicant to furnish full and proper account of the imprest amounting to Rs. 44,554/- . A threat was also carried therein that if the Applicant fails to render full and proper account, then the entire amount of Rs. 44,554/- are to be recovered from the Applicant and, that, a disciplinary proceedings will also be initiated against him. After receipt of the said letter dated 10.06.1998, the Additional Secretary to Govt. of Orissa in Home Department issued a letter to the Applicant (on 24.07.1998) intimating him about the contents of the letter (dated 10.06.1998 of the Ministry of Civil Aviation) and, further directed the Applicant to render full and proper account to the Chairman of the Authority.

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within two weeks. The applicant after receiving the said letter dated 24.07.1998, gave a reply on 27.7.1998 to the Additional Secretary to the Government of Orissa (in Home Department) mentioning therein that the full and proper account has already been rendered. The Applicant, further requested that the copy of the letter of the Ministry of Civil Aviation and its enclosures, if any, be given to him (Applicant) for taking further necessary action in the matter. But without handing over the copies of the said letter (and enclosures thereto), the Applicant was forced by the State Government of Orissa (as well as by the Union of India) to submit the vouchers and was, further directed to render the full and proper account, so far as the aforesaid imprest amount of Rs. 44,554/- is concerned. Hence the present Original Application has been filed by the Applicant under section 19 of the Administrative Tribunals Act, 1985 for redressal of his grievances.

2. Respondents have filed their counters inter alia stating that the Chairman of the Authority is not competent to grant permission for having Secret Service Fund; nor the expenditure incurred have received due approval of the Finance Wing. They have also raised the question of entertaining this Original Application, as the Applicant did not exhaust the Departmental remedies before approaching this Tribunal under section 19 of the Administrative Tribunals Act, 1985.

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3. In this case, Mr.J.Das, Learned Counsel appearing for the Applicant, and Mr.A.K.Bose, Learned Senior Standing Counsel appearing for the Respondents were heard and the records were perused in course of hearing.

4. Before answering to the merits of the case, it is worthwhile to deal with regard to the preliminary objections raised by the Respondents 2, 3 and 5 in their counter with regard to the maintainability of this Original Application at this stage, without exhausting the Departmental remedies. This objection of the Respondents was based on the provisions contained under Section 20 of the Act. Section 20 of the Act runs thus:

*20. APPLICATIONS NOT TO BE ADMITTED UNLESS OTHER REMEDIES EXHAUSTED:—(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section(1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances –

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired;

(3) For the purposes of sub-sections(1) and (2)



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any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

The word 'Ordinarily' has received due consideration of this Bench in the case of KISHORE CHANDRA PATTANAYAK VRS.

STATE OF ORISSA AND OTHERS (reported in (1987) 4 Administrative Tribunals Cases 812) and after considering various aspect of the matter and the decision of the Hon'ble Apex Court of

India rendered in the case of KAILASH CHANDRA VRS. UNION OF

INDIA (reported in AIR 1961 SC 1346) it was held by this Tribunal that since the legislature consciously embodied the word "Ordinarily" in the Act, the Tribunal is not debarred from entertaining an application even in a case where the Applicant does not exhaust the departmental remedies, in an emergent situation. Here in this instant case, after a protracted correspondence, since no action was taken and under

Annexure-9 dated 10.06.1998 a threat has been given to the Applicant, finding no other way, the Applicant has rightly invoked the jurisdiction of this Tribunal. Hence, the plea taken by the Respondents 2, 3 and 5 with regard to maintainability, is hereby over-ruled; especially because this case has remained pending in this Tribunal for last five years.

5. Now coming to the merit of the case, it is seen that the Applicant, in the capacity of Chief Vigilance Officer of the National Airport Authority, sent a proposal



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under Annexure-10 series. It is universally acknowledged that Intelligence is indispensable for survival; be it an individual or an Organisation, as well as for any nation. The intelligence analysis is then presented to the Head of the organisation to develop suitable organisational responses or policies in the matter. While much of the intelligence is collected through overt means, yet often there remain gaps and inconsistencies in the same; which hinder a correct and full appreciation of the facts and circumstances relating to the issues in question. Therefore, to reduce such gaps or inconsistencies very often the required material, data and evidences are collected with the help of covert means. These operations are generally done with the help of agents who are suitably remunerated for the purpose. These operations are done in secrecy, because the means employed sometimes may not be strictly legal and the persons engaged may not be willing to get exposed and thereby become vulnerable to the wrath of others, who are likely to be affected for such operations. The identity of concerned persons has to be protected from disclosure at all costs; for which various procedures are adopted for the same. Secrecy in intelligence operations is achieved by adopting a number of precautions during the transactions. One such measure is to pay the agents or meet the expenditures incurred for the intelligence operations from an exclusive account commonly known as the "Secret Service Fund". The expenditures made from the said S.S. Fund do not form a part of the routine ex-



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expenditures of the organisation. For the payments made from the S.S. Funds, the recipients may not give receipts for which certificates of expenditure are given by the Intelligence officers making such payments. Accordingly, the proposal in question was placed before the Chairman of the Authority for creation of a Secret Service in the Authority for success in vigilance work in collecting the intelligence. The said proposal was approved by the Chairman and Member(Finance) of the Authority and, thereafter, received due consideration of ED(F&A). Accordingly, from time to time, after approval of the Chairman, money was being sanctioned and spent in the intelligence work and due utilisation certificates were also sent. At no point of time, neither after the first sanction was made and utilisation certificate was received by the Finance wing nor thereafter any objection had been made from any angle in this respect. It is also not the case of the Respondents that money had not been spent for the purpose it was sanctioned. It is also not the case of the Respondents that the said money was misappropriated. Sanction was made by the Chairman who was not only the higher authority of the Applicant but also the Head of the National Airport Authority of India; who had concurred for such expenditure and ordered for defacement of the vouchers.

6. The most important feature of the matter is that to keep secret the names of the recipients who had been engaged for this work, no vouchers were kept/preserved, maintained (which was also approved for the good administration).



under the orders of the Chairman; who is the Head of the National Airport Authority. Therefore, at this belated stage, asking the Applicant, virtually, to disclose the secrecy, which was ordered by the Head to be not kept/preserved/maintained is not only bad but also against the law of the land. In this connection the relevant portion of Section 123 of the Evidence Act is quoted herein below:-


"No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit."

7. Intelligence is the basic organ of security. The documents, which are protected from production are those the production of which would be prejudicial to the public interests or those which belong to that class which, as a matter of practice, are kept secret for the proper maintenance of the efficient working of the public service. It is a well established principle that what was injurious to the public interest or prejudicial to the proper functioning of the public services was not to be disclosed and if the objection was based on these grounds it must prevail. The fundamental and governing principle is that documents of the class may be withheld from production only when this is necessary in the public interest. It was clearly suggested by the Applicant in his report to the Chairman that disclosure of the names/keeping vouchers out of the expenditure from Secret Service Fund would be harmful for the public interest and the day-to-day functioning of the Vigilance Cell. After approval of the

13

expenditure, the same was approved by the Chairman of the Authority and utilisation certificate was also sent; this was done keeping in view the fact that however, honourable and public spirited a person might be, he would undoubtedly feel somewhat inhibited in the future; if he found that as a result of his last response to a request for information he had himself become a defendant or an accused. It is also not evident from the records that any action has been taken as against the Chairman of the Authority; nor at any time when the sanction was made from time to time. But after the repatriation of the Applicant to his parent Department, apparently, in order to bear the grudge upon the Applicant, such a step has been taken. After long lapse of time, when something is done with the approval of the higher authorities, it is also not wise or possible on the part of the Applicant to produce the information/documents asked for. That apart, these documents were ordered by the head of the Authority to be defaced long back.

8. In view of the discussions made above, since the Applicant has acted in good faith, in the interest of the organisation, in a manner with the approval of the higher Authority i.e. Chairman, National Airport Authority, and fact remains that no action has been taken by any other authority/the Chairman, the Applicant ought not to have been asked to furnish any documents (as asked for in Annexure-9) and, in the said premises, the letter under Annexure-9 dated 10.06.1998 and letter under Annexure-7

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dated 25.07.1998 are hereby quashed. The amount which were spent from the S.S. Fund under accepted utilisation certificate should be appropriately treated to have been passed for payment; and, as a consequence, if any amount had been recovered from the Applicant should be refunded to him forthwith.

9. In the result, therefore, this Original Application is allowed. No costs.

Manoranjan Mohanty
29/04/03
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL)