

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NOs. 490 of 2013 & 503 of 2013

CORAM

Tuesday this the 26th day of July, 2016

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

OA No.490/2013

- 1 S.Unnikrishnan Nair,
Inspector of Police,
Central Bureau of Investigation,
Lavanya,Chavadinada, Venganoor,
Thiruvananthapuram-695523.
- 2 K.K.Rajan, Inspector of Police,
Central Bureau of Investigation (S.C.B)
Kailasam, Gurudev Nagar
Ayathil PO, Kollam-691017.

...Applicants

(By Senior Advocate Mr. M.R.Rajendran Nair alongwith
Advocate Mr. M.R.Sudheendran)

OA No.503/2013

K.K.Rajan, Inspector of Police,
Central Bureau of Investigation (S.C.B)
Kailasam, Gurudev Nagar
Ayathil PO, Kollam-691017.

...Applicant

(By Senior Advocate Mr. M.R.Rajendran Nair alongwith
Advocate Mr. M.R.Sudheendran)

Versus

1. Union of India, represented by its Secretary,
Department of Personnel & Training,
New Delhi-110 001.

2. Director, Central Bureau of Investigation,
C.G.O. Complex, Lodhi Road, New Delhi.3.
3. Deputy Director (Administration)
CBI Headquarters, 5-B, 7th floor, CGO Complex,
Lodhi Road, New Delhi-110 003.
4. Superintendent of Police,
Central Bureau of Investigation,
Thiruvananthapuram-695001.
5. Sri Santanu Kar,
Inquiry Officer,
Additional Superintendent of Police,
Central Bureau of Investigation,
SPE:CBI:ACB: Kolkata-700020

...Respondents in both OAs

(By Advocate Mr. N.Anil Kumar, Sr.PCGC for R.1 to 4)

This application having been finally heard on 13.07.2016, the Tribunal on 26.07.2016 delivered the following:

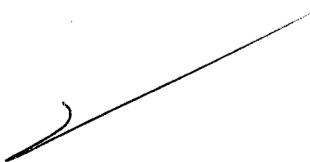
ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

Since the issue involved in both the cases is the same, these cases are heard together and are disposed of by this common order.

2. The applicants have filed these applications to direct the respondents to make available the Case Diary and other documents sought for by the applicants in Annexure A10 representation so as to facilitate them to defend the charges levelled against them. The other reliefs sought for in the application are not referred to here as the same have already been considered and orders have been issued pertaining to the same.

3. The gist of the case is as stated under:



The applicants were working as Inspectors in the Trivandrum Branch of CBI. They were entrusted with the conduct of investigation of Sampath Custodial Death Case pursuant to the judgment of the Hon'ble High Court of Kerala. During investigation the involvement of two IPS officers were also revealed. From that moment onwards the applicants were being harassed. One Shri Haridath was appointed as the Chief Investigation Officer. The applicants were assisting him in the investigation of the case. Shri Haridath committed suicide on 15.3.2012. In a note alleged to have been written by Shri Haridath some remarks were made based on which the applicants were transferred to Calcutta and Guwahati. That transfer order was challenged before this Tribunal. Thereafter the applicants were suspended. The suspension orders were also challenged before this Tribunal. During the pendency of the same charges were issued against the applicants. The applicants contend that the Case Diary and other documents relating to Sampath Custodial Death case are absolutely necessary for defending the charges levelled against the applicants. Request was made by the applicants to the 5th respondent, the inquiry officer, to provide them the Case Diary and other documents mentioned in Annexure A10 application submitted by the applicants. But the request was turned down. According to the applicants without those documents, they cannot substantiate the plea raised by them in the written statement/defence and if those documents are denied irreparable injury would be caused to them.

4. The respondents resisted the claim made by the applicants contending as follows.

The applicants should cooperate with the inquiry and has to assist in completing the inquiry within the time stipulated by this Tribunal. The request made by the applicants is only an instance of non-cooperation and a strategy to delay the departmental inquiry. The charges and statement of imputations were served on the applicant on 7.9.2012. The inquiry officer and presenting officer attended the inquiry travelling all the way from Calcutta to Kerala. Witnesses were summoned from Chennai, Delhi, Calcutta, Guwahati etc. The Case Diary and other documents sought for by the applicants are not necessary for the inquiry based on the charges levelled against the applicants. The statements of the witnesses recorded by the investigating officer in Sampath Custodial Death case, the confession statement and other records have no relevance to the inquiry in the instant case. The request has been made with malafide intention. The charges levelled against the applicant do not pertain to the investigation of Sampath Custodial Death case. The applicants can go through the statements written by them only and they cannot claim the copies of the Case Diary/statement written by other officers. The copies of the Case Diary cannot be made available as it is a privileged document. The charges levelled against the applicants are for official misconduct committed by them. It does not pertain to the exoneration or the culpability of the two IPS officers, as

alleged by the applicants. The request made by the applicants is only a strategy adopted by them to obtain confidential documents with ulterior motive and to scuttle the departmental inquiry by adopting dilatory tactics. The applicants did not face the inquiry; they did not participate when witnesses were examined but they walked out in the inquiry with total disregard to the inquiry proceedings.

5. A rejoinder was filed by the applicants refuting the allegations made in the reply statements.

6. Additional reply statement was filed denying some of the additional averments mad by the applicants in the rejoinder.

7. We have heard the learned Senior counsel for the applicants and the Central Government Panel Counsel and have gone through the documents/pleadings on record.

8. The point for consideration is whether the applicants are entitled to get copies of the documents as sought for by them for defending the charges levelled against them?

9. It is pointed out that the applicants had earlier challenged the order of suspension passed against them. That was declined by the Tribunal. The order of the Tribunal was challenged by the applicants before the Hon'ble High Court of Kerala in OP (CAT) No. 2314/2012 and OP (CAT) No. 568/2013. As per the common judgment dated 1.7.2013 the Hon'ble High Court dismissed those Writ Petitions filed by the applicants.

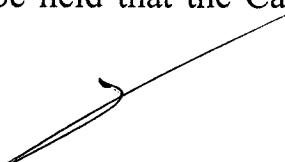
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The learned Senior counsel appearing for the applicants would submit that unless the documents sought for by the applicants are made available, the charges levelled against them cannot be defended properly. Since that is the constitutional right to defend the charges framed against them, that cannot be denied contending that the Case Diaries are privileged documents.

It is further submitted there is no privilege as such for the Case Diaries. The embargo against user of the statement is contained in Section 162 of Cr.PC. The bar is applicable only where such statement is sought to be used at any inquiry or trial in respect of investigation at the time when such statement was made. The statements recorded which are available in the Case Diary file are not used in the trial in respect of any offence but those statements are intended to be used by the charged officers to substantiate the defence taken by them in the written statement. There is no impediment in making use of such statements available in the Case Diary as otherwise it will defeat the constitutional right guaranteed to the applicants. The protection against user of such statements is not available in any proceedings other than an inquiry or trial in respect of an offence under investigation. It is further submitted that a statement made before the police officer during reinvestigation can be produced and used as defence in a Writ Petition or other civil proceedings. Relying on the decision of the Hon'ble Supreme Court in ***Khatri and others Vs. State of Bihar and others - AIR 1981 SC 1068 : 1981 KHC 579*** it is further submitted by the learned Senior counsel

that Section 172 of Cr.PC is intended to operate only in inquiry or trial for an offence and even this bar is a limited bar, because in an inquiry or trial the bar does not operate, if the Case Diary is used by the police officer for refreshing his memory or the Criminal Court uses it for the purpose of contradicting such police officer. Therefore, the bar as aforesaid can have no application, where a Case Diary is sought to be produced and used in evidence in a civil proceedings or a proceedings under Article 32 or Article 226 of the Constitution. Since the application filed before this Tribunal is akin to Article 226 of the Constitution of India, the observation made by the Supreme Court as aforesaid are squarely applicable, it is further argued. Therefore, it is contended that even if the statement or other records available in the Case Diary may be part of the Case Diary, still there is no legal impediment in production and use of the Case Diary in the inquiry initiated against the applicants.

10. It was contended by the learned counsel for the respondents that under the terms of Section 172 of Cr.PC in inquiry or a trial accused is not entitled to call for the Case Diary and peruse the same and so it is difficult to believe that the legislature could have intended that a third party to be entitled to call for or look at the Case Diary in some other proceedings; for, that would jeopardize the secrecy of the investigation and defeat the object and purpose of Section 172 of Cr.PC, and therefore, applying the principle of that Section, it must be held that the Case Diaries are totally protected



from disclosure and as such the applicants cannot seek production of the Case Diary or copies of the statements from first page to last page of Case Diary, as sought for by the applicants. The contention raised by the applicants that they are entitled to get the copies of entire C.D file running to hundreds of pages is not allowable. But, the contention that the Case Diary file is a privileged document and applicants are not entitled to get excerpts or copies of relevant pages of the statements in order to substantiate the defence taken by them in the inquiry initiated against them cannot be accepted. In order to enforce the fundamental rights guaranteed under the constitution, any accused or delinquent officer is entitled to make use of such statements or records to defend the action taken against them. No doubt, that right cannot be allowed to be misused. Therefore, though the claim made by the applicants that the copies of the entire Case Diary from first page to last page should be made available to them is not acceptable, the applicants have the right to peruse the C.D file which should be made available before the inquiry officer.

11. In *Khatri's case* (supra) the question which arose before the Hon'ble Supreme Court for consideration was whether certain documents called for by the court by its order dated 16.2.1981 are liable to be produced by the State or whether their production is barred under some provision of law. The documents which were sought to be produced were the CID reports submitted by DIG CID (Anti-Dacoity), the CID reports in

all the 24 cases submitted by LV Singh, DIG, CID and his associates, the letters (numbers and date of which are mentioned there) the files containing the correspondence and notings exchanged between that DIG, Additional DIG etc. The respondents objected to production on the ground that they are protected from disclosure under Sections 162 ad 172 of the Cr.PC and that the petitioners are not entitled to see them or to make use of them in the proceedings initiated against the petitioners therein. Section 172 (2) of the Cr.PC says that any criminal court may send for Police diaries of a case under inquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provision of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 shall apply. The prohibition under Section 162 and 172 of Cr.PC is not available, when the statements or file noting mentioned therein are to be made use of in an inquiry other than the inquiry or trial mentioned in those provisions. There is no dearth of authority for the position that statements contained in such Case Diaries can be proved through the officer concerned in any civil proceedings or in an inquiry relating to disposal of properties under Section 452 Cr.PC etc.

Similarly, if the applicants are of the firm view that there are some materials available in the Case Diary which would strengthen the contention raised by them in the defence statement, such a request made by them cannot be denied nor can it be said that the production of the Case Diary before the inquiry officer would jeopardize the secrecy of the investigation. The applicants are responsible officers and so they are expected to and should bear in mind that the confidentiality of the Case Diary should be maintained even though they are entitled to make use of relevant statements or records contained therein for defending the charges framed against them

12. It is vehemently argued on behalf of the respondents that the charges levelled against the applicants as can be seen from Annexure A4 would make it clear that the charges/imputations levelled against those officers have nothing to do with the Sampath Custodial Death Case. The respondents cannot contend as to what should be the nature of the defence the applicants can put forward or how the charges levelled against them should be defended. It seems the applicants wanted to contend that the charges levelled against them do smack of victimization as well. Be that as it may, since there is no absolute embargo or protection against the production of the Case Diary at the time of the inquiry, the stand taken by the respondents that the Case Diary cannot be made available at all cannot be sustained. But at the same time, the request made by the applicants that copies of the entire records should be made available also cannot be

sustained.

13. The right of access of official records is not unlimited and it is open to the government to deny such access if in its opinion such records are not relevant to the case or not desirable in the public interest to allow such access. The power to refuse access to official records should be sparingly exercised. The question of relevancy should be looked at from the point of view of the defence. If there is any possible line of defence to which the document may be relevant, though the relevancy is not clear to the disciplinary authority or the inquiry officer at that time when the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. It is pointed out by the applicants that there is nothing to show that the public interest would suffer, if the Case Diaries are made available at the time of inquiry. Normally occasion for refusal to access on the ground that it is not in public interest should not arise, if the document is intended to be used in proof of the charge. But here the Case Diary or the statements contained in the Case Diary file are not intended to be used by the respondents against the applicants but they are intended to be used by the defence in substantiation of the plea taken by them. It is pointed out by the respondents that the documents which are sought for by the applicants are absolutely unconnected with the inquiry initiated against them because

those documents are not referred to in the charge sheet and as such it is totally unnecessary for them to have the Case Diary produced or to get the copies of the same. According to them such a request was made only to delay or torpido the inquiry somehow or other.

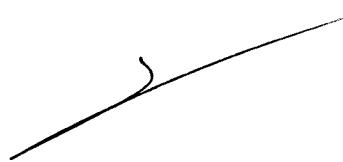
14. Usually the charged officer used to ask for access to documents to which reference has been made in the statement of imputations or documents and records which the delinquent officer considers as relevant for the purpose of his defence. The respondents contend that the list of documents which are proposed to be relied upon to prove the charge against the applicant as can be seen from the charge and the imputations which form part of the charge would clearly show that the CD file has nothing to do with the charge framed against them. As stated earlier if the delinquent employee concerned considers such documents relevant for the purpose of his defence, the production of the same cannot be denied. Similarly it cannot be denied that the charged officer is entitled to inspection of records/documents which may have a bearing on the case. But the respondents contend that the CD file and other documents, production of which are sought for have no relevance. But as stated earlier that has to be looked at from the point of the view of defence.

15. In the light of the dictum laid down by the Hon'ble Supreme Court in *Khatri's case (supra)* the plea raised by the respondents that the CD file cannot be directed to be produced and that it cannot be perused by the



applicants and used by the applicants for their defence is found to be unsustainable. But at the same time when the CD file is produced before the inquiry officer, it should be ensured that at the time of perusal and inspection by the applicants, the statements/record/documents in the CD file are not tampered with. For that purpose directions can be issued.

16. Considering the totality of the facts and circumstances of the case, we are inclined to hold that the objections raised by the respondents that the CD file is a privileged document and the applicants shall not have access to the same is found untenable. The CD file shall be made available by the investigating officer or any other officer authorized for that purpose to produce the same before the inquiry officer. The applicants shall be permitted to peruse the CD file in the presence of the inquiry officer and the officer of the respondents (CBI). The applicants can take note of the relevant facts/points available in the Case Diary (CD), noting the page numbers of the CD file and if necessary the applicants can seek the copies of such relevant pages which the inquiry officer shall cause it to be made available to the applicants. It is better that the day of examination of witnesses is fixed after the aforesaid exercise. Since the Case Diary (CD) is permitted to be perused in the presence of the inquiry officer and the officer of the CBI there could be no chance of tampering of the CD file. The CD file shall be directed to be taken back by the officer of the CBI with a direction to produce it again as and when required. The applicants will

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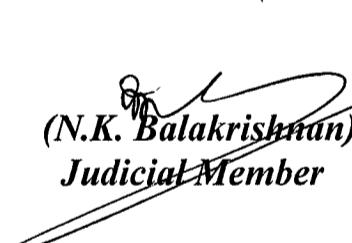
cooperate with the inquiry so as to have an expeditious completion of the inquiry. Delay in completion of the inquiry will do no good to anybody.

17. It is submitted by the learned senior counsel for the applicants that some of the witnesses were examined in the absence of the applicants. In order to avoid the plea of denial of opportunity, those witnesses who were examined by the Presenting Officer and who were not cross-examined by the applicants, shall be recalled for cross-examination by the applicants. Since those witnesses are to come from far off places, the applicants should complete the cross-examination and shall co-operate with the conduct of the inquiry without delay.

18. The Original Applications are disposed of as above. No order as to costs.


(Mrs. P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member