

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 12 APR 1994

APPLICATION NUMBER: 764 of 1993.

APPLICANTS:

Sri.S.M.Pattanaik
To.

RESPONDENTS:

Sri.Veerappa Moily, Chief Minister of
Karnataka and four others.

1. Sri.B.R.Hegde, Advocate,
No.247, Indiranagar Ist Stage,
Bangalore-560 038.
2. The Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bangalore-1.
3. Sri.M.S.Padmarajaiah,
Senior Central Govt.Stng.Counsel,
High Court Bldg, Bangalore-1.
4. Sri.M.H.Motigi,
Government Advocate,
Advocate General's Office,
KAT Unit, BDA Shopping Centre,
Indiranagar, Bangalore-38.
5. Sri.B.V.Acharya,
Advocate General,
High Court Bldg,
Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 16th/17th March, 1994.

[Signature]
for DEPUTY REGISTRAR 12/4
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.764/93

16TH/17TH DAY OF MARCH 1994

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri T.V. Ramanan ... Member [A]

Shri S.M. Pattanaik,
I.A.S. Karnataka Cadre,
S/o late Shri Laxmidhar Pattanaik,
Residing at 1-D; HVS Paradise,
21, Andree Road,
Shanthinagar,
Bangalore-560 027.

... Applicant

[By Advocate Shri B.R. Hegde]

v.

1. Shri Veerappa Moily,
Chief Minister of Karnataka,
Vidhana Soudha,
Bangalore-560 001.
2. Shri J.C. Lynn,
Chief Secretary,
Government of Karnataka,
Vidhana Soudha,
Bangalore-560 001.
3. Shri R. Jagannathan,
Additional Director General of Police,
Lok Ayukta Office,
M.S.Building, Dr. Ambedkar Veedhi,
Bangalore-560 001.
4. Government of Karnataka,
by its Chief Secretary,
Vidhana Soudha,
Bangalore-560 001.
5. Government of India by its
Secretary to the
Department of Personnel,
North Block,
New Delhi-110 001.

... Respondents

[By Advocate General Shri B.V. Acharya with
Shri M.H. Motigi for Respondents 1 to 4 and
by Shri M.S.Padmarajaiah, Senior Standing
Counsel for Central Government for R-5]



ORDER

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. This application arising under Section 19 of the Administrative Tribunals Act is sponsored on behalf of and at the instance of a very senior Indian Administrative Service Officer by name Shri S.M. Pattanaik [hereinafter referred to as 'the Officer'] who is presently under suspension. The order of suspension dated 31.3.1993, produced herein at Annexure A, is under challenge in these proceedings mainly on two grounds ie., that it is clearly vitiated by mala fides being the result of a tripartite move between the Chief Minister ['CM' for short], the Chief Secretary ['CS' for short] and the Head of the Lok Ayukta ['LA' for short], Vigilance Wing, an officer of the rank of Director General of Police ['DGP' for short], all of whom have connived together and contrived to place the applicant in a position of great humiliation by suspending him from service under Annexure A. Even otherwise it is urged that there is no material whatsoever on the basis of which the officer was suspected of having amassed a lot of assets disproportionate to the known sources of his income as a high ranking IAS officer. Strong allegations are made to make out both these points in the course of this application canvassed fairly by an equally lengthy rejoinder following the objection statements filed on behalf of all the respondents each one for himself. The rejoinder per se appears to give a new shape to the application itself. Therefore, it is with hesitation we confer on it the status ^{of a} rejoinder because once the pleadings are complete ie., the application and joined in by objection statements, unless the court requires some additional information

8

either of the parties may produce some additional material which could be of some use in solving the problem before court, the rejoinder is rarely permitted and what is more the rules as originally framed did not permit filing of the rejoinder but Shri Rajiv Hegde rises to tell us that now under the amended rules the rejoinder is permitted. Be that as it may, we have not merely read the application, objections and the rejoinder and we propose to treat the entire thing as part of the pleadings in this case. At this stage we think it will be somewhat advantageous to extract the impugned order of suspension which although not very brief, we must say, it is fairly brief —

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub: Case registered by Karnataka LOKAYUKTA against Shri S.M. Pattanaik, IAS [KTK-67] under prevention of Corruption Act, 1988 - Suspension orders-reg.

- - -

ORDER NO: DPAR 194 SAS 93, BANGALORE DATED 31.3.1993.

Whereas it has been brought to the notice of the Government that a prima facie case has been established against Shri S.M. Pattanaik, IAS [KTK-67][on leave] for possession of assets disproportionate to known sources of his income and a case under Section 13[1][e] read with Section 13[2] of Prevention of Corruption Act 1988, has been registered on 16.3.1993 vide Crime No.8:93, in Bureau of Investigation, Karnataka Lokayuktha, Bangalore City Division.

Whereas Inspector General of Police-I, Bureau of Investigation, Karnataka Lokayuktha has reported that the investigation is still in progress and further investigation needs to be carried out and in the course of investigation, it would be necessary to examine a large number of official and non-official witnesses who have to depose freely without fear or inhibition of any kind and that Shri S.M. Pattanaik, IAS., is a senior officer and his continued presence in office would not be conducive to free and fair investigation.

Whereas on the directions of the Hon'ble Lokayuktha, the IGP-I, Bureau of Investigation, Karnataka Lokayuktha has recommended to the Government to place Shri S.M. Pattanaik, IAS, under suspension in order to facilitate a free and fair investigation of the case under Section 13[1][e] read with Section 13[2] of Prevention of Corruption Act, 1988.

Whereas Government are satisfied that it is desirable



to place Shri S.M. Pattanaik, IAS, under suspension.

Now, therefore, in exercise of the powers conferred under sub-rule 3 of rule 3 of All India Services [Discipline and appeal] Rules, 1969, the Government of Karnataka hereby place Shri S.M. Pattanaik, IAS, under suspension with immediate effect pending finalisation of the criminal case registered against him.

During the period of suspension, Shri S.M. Pattanaik, IAS, shall be paid subsistence allowance according to Rule 4 of All India Services [Discipline & Appeal] Rules, 1969.

During the period of suspension, the officer shall not leave the headquarters without the written permission of the State Government under any circumstances.

BY ORDER AND IN THE NAME OF
THE GOVERNOR OF KARNATAKA

Sd/- [SIDDARAMAIAH]
Under Secretary to Government,
D.P.A.R.[Services-I]"

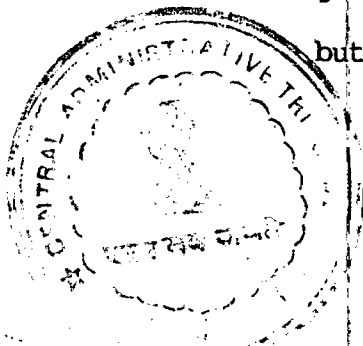
A reading of the above order would show that action was taken to place the officer under suspension under Sub-Rule [3] of Rule 3 of the All India Services [Discipline and Appeal] Rules, 1969.

The said Sub-Rule reads thus--

"3[3] A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a member of the Service or is likely to embarrass him in the discharge of his duties or involves moral turpitude."[emphasis supplied]

A perusal of the Sub-Rules reproduced above would show that a member of an All India Service against whom an investigation, inquiry or trial relating to a criminal charge is pending, can be placed under suspension until the termination of all the proceedings relating to the charge subject to the charge being related to his position as a member of an All India Service is likely to embarrass him in the discharge of his duties or involves moral turpitude.

2. As the impugned order of suspension shows that what was eventually in the offing is a contemplated prosecution under Section 13[2] of the Prevention of Corruption Act, 1988 in relation to which on the date of the impugned order a case in File No.8/93 was registered by the Bureau of Investigation, Vigilance Wing of Karnataka LA, presently headed by a Lokayuktha who happens to be a former Chief Justice of a High Court, his deputy the Upalokayuktha, another dignitary being one who had held the office of the Judge of a High Court and also a Vice-Chairman of the Central Administrative Tribunal before he came to accept the office of Upalokayukhta. So high is the office of the LA that the first LA incidentally was a former Judge of the Supreme Court. The gentleman now in office is, as mentioned earlier, a former Chief Justice of a High Court. The very idea of having an organisation headed by men of such high distinction is to enable investigation into complaints or misconduct not merely against officers but also against the ministers as well. It is at the behest



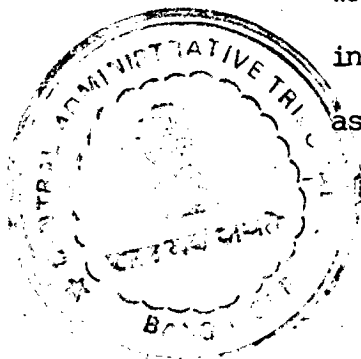
of that high office of IA an investigation had been launched against the applicant to ascertain whether he did possess assets disproportionate to his known sources of income and to facilitate an impartial investigation the Government had decided to place the officer under suspension. As a result of the impugned order at Annexure A the officer has been under suspension right through from 31.3.1993 to this date which marks one year of hibernation out of office. Naturally, he is seriously grieved by the impugned order of suspension which not merely has the effect of depriving him of all the benefits of the office with its perks etc., but it also exposes ^{him} to some kind of humiliation which he thinks has been needlessly heaped upon him. Before we advert to the allegations made by the applicant whom we have heard for quite some time we would like to make one aspect very clear and that perhaps would help to clear the mind of the applicant that it was wrong on his part to assail the order of suspension ^{that} with the onset of stewardship of CM Shri Veerappa Moily, the 1st respondent, Shri J.C. Lynn, the Chief Secretary, the 2nd respondent and the senior IPS Officer viz., Shri Jagannathan, the 3rd respondent, IGP, which office itself had been upgraded subsequently to that of Additional Director General of Police, the contribution of this trio has really led to his downfall. To assure ourselves that there was no truth in the belief the applicant entertained we called for the papers not merely from the State Government but also from the Karnataka Lokayuktha apropos whom we really do not have any jurisdiction at all. It must be said to the credit of the counsel of the State, learned Advocate General ['AG' for short] never raised any objections for placing before

us whatever records, be it from Karnataka State Government or Karnataka LA, for he produced them with great alacrity which indicated that at any rate, so far as we are concerned, the Government of Karnataka and LA had no hesitation in showing us whatever material they had. Towards us, it was a case of cupboard not holding any skeletons and whatever was available with them everything was produced before us and we are happy over the straightforward method of dealing with the matter by the learned AG ensuring that nothing was hidden from us. From the records we were shown we found that the decision to embark on an investigation into the affairs of this officer was taken way back in the year 1990 when it appears this officer had built, according to Government, a huge building which he had let out to State Bank of India for a very high rental. Government, probably felt uneasy about all these things and ordered some investigation and some paper work had been done in the year 1992 and ultimately on 7.11.1992 the then Chief Minister, Shri S. Bangarappa, directed that this matter may be entrusted to the Karnataka LA for further inquiry. We see from the noting of the DPAR file that the Chief Minister has noted

"This may be referred to Lokayuktha for inquiry

Sd/- S. Bangarappa."

Pursuant to the direction of the Chief Minister, Government came to pass an order on 25.11.1992 citing in main the construction of a house at a huge cost on the basis of which a number of issues were raised and Government wanted the benefit of an investigation into those issues by the LA. To conclude the narration on this aspect of the matter we think it proper to produce the proceedings



of the Government of Karnataka in that behalf which read as follows:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

SUB: Construction of house by Shri S.M. Pattanaik, IAS - Investigation - reg. -

PREAMBLE:

Dr. S.M. Pattanaik, IAS, has drawn House building Advance of Rs.75,000/- on 11.1.1974 and constructed the house in Site No.32:3 Abbas Ali Road, Bangalore. Afterwards he sold the said house for Rs.8,45,000/- and a loan amount of Rs.1,20,000 was repaid by him to Metropolitan Housing Society after obtaining permission from Government. When a site in HAL II Stage was allotted to him, he contended that the site is small one and a big site was allotted in No.2989:1A HAL II Stage while he was working as Commissioner, Bangalore Development Authority and the cost of the site of Rs.1,00,000/- was stated to be borne by him out of the sale proceeds of his first house. He was accorded post facto permission to obtain a loan of Rs.16 lakhs for construction of a house in the said site vide Government letter No.DPAR 273 SME 89, dated 21.3.90.

After the construction of the house, the officer furnished a completion report on 10/5/90 and according to this report, he has invested an amount of Rs.21.88 lakhs and this amount was stated to be borne from the following sources.

1. Loan from Vijaya Bank	Rs.17.00 lakhs
2. Deposit amount without interest [Celler and Basement floors]	Rs. 1.50 lakhs
3. Deposit amount without interest [first and second floors].	Rs. 3.38 lakhs

Total	Rs. 21.88 lakhs

Subsequently on 10.9.90 the officer has intimated that the cost was borne from the following sources:-

1. Loan from Vijaya Bank	Rs.17.00 lakhs
2. Deposit amoung without interest received from SBI	Rs. 2.50 lakhs
3. Savings	Rs. 2.38 lakhs

<u>Total</u>	<u>Rs.21.88 lakhs</u>

(14)

While verifying the report submitted by the officer, the following defects were noticed.

1. The officer has received an amount of Rs.2.50 lakhs from State Bank of India without prior intimation to Government.
2. The business relating to receipt of 4 months rent for construction of strong room has also not been brought to the notice of Government.
3. Even though, permission of Government was accorded to raise a loan of Rs.16 lakhs from Vijaya Bank, the officer has raised a loan of Rs.17 lakhs.
4. The officer has rented out his house to State Bank of India without prior intimation to Government.

The matter has been examined in detail and it is decided to entrust the same to Lokayukta for an enquiry and report under section 7[2][a] of Karnataka Lokayukta Act, 1984, on the following issues.

- i. Mobilisation of additional resources and sources thereof.
- ii. Nexus between the financing bank/the lessor and the officer in his previous official capacities.
- iii. his claim to have supervised the entire construction and whether there has been under valuation of the building.
- iv. Whether the officer has assets disproportionate to the known and reported source of income.
- v. The Bangalore City Corporation while issuing occupancy certificate for the house, has stated that this house is a 'single dwelling/family only. Any violation of this condition will result in revocation of the occupation certificate issued.' But subsequently Bangalore City Corporation has made an assessment that this is a non-residential house. As the two reports are contrary to one another, the correct position may have to be ascertained.

/unit for exclusive
use of the members
of the

GOVERNMENT ORDER NO.DPAR 293 SME 90, BANGALORE, DATED : 25.11.1992

In exercise of the powers conferred under section 7[2][a] of the Karnataka Lokayukta Act, 1984, Government hereby ~~ex~~ accords sanction for entrusting the case relating to the issue referred to in the preamble in respect of Dr. S.M. Pattanaik to Hon'ble Lokayukta for detailed investigation in order to ascertain if such acquisition and transaction is commensurate with the known source of income, and clear and report the same to Government.

By order and in the name of
the Governor of Karnataka

Sd/- [M.R. NEELAKANTA]
Under Secretary to Govt., DPAR [Services-I]"



When this Government order was passed on 25.11.1992 Shri Veerappa Moily, the 1st respondent ['R' for short] herein had become CM displacing his predecessor Shri S. Bangarappa who was actually responsible for passing the order referred to supra entrusting the investigation into the affairs of the applicant to the IA. Shri J.C. Lynn, the present CS, R-2 herein, was appointed as CS of Karnataka only on 1.12.1992. Learned AG told us that selection of Shri Lynn was a cabinet decision and he was chosen for appointment as CS from out of a panel of ten contenders. We had occasion to see even that file and we found that there was no exaggeration in the submission by the learned AG that Shri Lynn got the nod over 10 officers of equal rank and pursuant to a cabinet decision he became the CS after returning from Delhi where we were told he was then serving on deputation. We wish to highlight here the fact that neither Shri Veerappa Moily nor Shri J.C. Lynn had anything to do with entrustment to the IA, of the case of the officer for investigation. It was the handiwork of the previous government and by the time both Shri Veerappa Moily and Shri Lynn took office as CM and CS, the IA had already the case on its anvil and probably was looking into his affairs. Earlier what happened was the officer had filed an application seeking voluntary retirement on 15.7.1992. We do not know what happened and we think we are not wrong in assuming that everything went on in the usual course, the papers put in by the officer for voluntary retirement which was then pending with the former CM were brought to the notice of the CS, Shri Lynn who promptly made a minute thereon saying that the IA May be asked to give a quick appraisal of the affairs of this officer in regard to the pending matter so that his papers for voluntary retirement may be processed. It is, therefore, that Shri Lynn wrote a DO

16

letter dated 28.12.1992 to Shri Jagannathan, R-3, IA, asking him to expedite the matter of investigation into the affairs of this officer there being already a request made by the Government for that purpose under Section 7[2][a] of the Karnataka Lokayukta Act, 1984, vide the GO dated 25.11.1992. Though the letter is labelled as confidential, we think it proper to make that letter as part of our order and it reads:

"Please refer to Government order No. DPAR 293 SME90, dated 25.11.1992, wherein a request has been made to investigate under Section 7[2][a] of the Karnataka Lokayukta Act, 1984, into the accumulation of assets of Dr. S.M. Pattanaik, IAS [RR-1967].

Dr. Pattanaik has filed the application for voluntary retirement under A.I.S [DCRB] Rules, 1958. Since an early decision to be taken in this regard, it will be helpful, if the completed investigation report is sent to Government immediately."

Shri Jagannathan naturally after receipt of this letter from Shri Lynn took up the matter in the IA again leading to a source report by one Shri Dakshinamurthy, a Police officer of IA who constituted the office of the investigation in this matter. That gentleman's source report, a copy of which is produced by the applicant himself as in appendix to Annexure A-2 indicating that information gathered by that Investigating Officer had disclosed that there was some material basis which warranted further investigation. The main source constituting the provocation for the vigilance wing of the IA in deciding to make a further probe into the affairs of this officer were [a] a building constructed by the officer at Indiranagar at a cost of ^{about} Rs.30 lakhs, [b] his investments in shares and debentures worth about Rs.16.51 lakhs, [c] investments made in Sitansu Mohan & Co. [Utkal Breweries Pvt. Ltd.] of about Rs.9.63 lakhs and [d] investments on



purchase of sites [including the construction of earlier house] about Rs.3.20 lakhs aggregating to about Rs.59.34 lakhs. When apparently this source report was placed before R-3, the matter, it appears, was taken up with the LA and with his approval a case was registered in LA Police Station and further investigation taken up, with the first step of organising a raid on the house of the officer somewhere in Lavelle Road where he was then found living. The raid took place on the morning of 20.3.1993, which according to the officer, did not reveal any Solomon's mines which the LA was expecting but only brought out some new/used house hold effects, nothing unusual in an officer's household like the Refrigerator, T.V., V.C.R., and other trivia but nothing of substance or value by the investigating officer but also he has, however, found a Premier car 118 NE standing in the portals of the house valued at less than Rs.2 lakhs but from later investigations it transpires that the car belonged to one Shri K.K. Patnaik, father-in-law of the officer. At the Bar we were told that the father-in-law had generously allowed the son-in-law to use the car and that is how the car was found parked in the house of the officer when the raid took place. As a matter of fact, the Panchanama of the household effects found by the Investigating officer refers to the presence of the car and states that the registered owner of the car was one Shri K.K. Patnaik. When the raiding party returned to the office of LA with all this material, Shri Jagannathan took up the matter again with LA seeking instructions regarding placing the officer under suspension as it was felt that further investigation to progress

18

smoothly the placing of the officer under suspension was ^{very} necessary. From the file of the LA we have found that the LA having concurred with the recommendation of the Director General of Police, Shri Jagannathan on 30.3.1993 a request was made to the Government of Karnataka to place the officer under suspension with immediate effect apprehending that the presence of the officer in office would hamper the conduct of the investigation. The recommendation of the LA having been placed before Shri Lynn who appears to have had no hesitation in agreeing with the same and a suitable recommendation was made and placed before the CM seeking orders to place the officer under suspension. This proposal was endorsed by the CM. All this is to be found from the files of the Government of Karnataka. The upshot of this exercise was the impugned order of suspension dated 31.3.1993. It so transpires that the officer was actually on leave at the time and as a matter of fact he had sought extension of leave by a further 2 months period from 1.4.1993 to 31.5.1993. He appears to have made the application for leave on 23.3.1993 some three days after the raid on his house. But then the officer having been placed under suspension on the basis of the impugned order on 31.3.1993 his application for extension of leave was treated as lapsed and nothing more was heard about it.

3. Soon after the Government passed the impugned order of suspension the applicant made his first foray to this Tribunal by challenging the said order in O.A. No.355/93 on 6.4.1993. He also asked for an interim stay of the suspension order. The Tribunal issued notice and directed consideration of the said stay application along with the main application. The respon-



(19)

dents, the CM, the CS and LA ie., the Director General Shri Jagannathan filed statements opposing the application denying all the allegations and maintaining that the impugned order was passed in the usual course and in accordance with law. They, inter alia, asked that we should not interfere with the order and on the contrary we should sustain the same. When the matter stood thus, the officer took us by surprise by filing a memo on 27.4.1993 seeking leave to withdraw that application in order to prefer a statutory appeal provided under Rule 16 of the All India Services [Discipline and Appeal] Rules, 1969, subject to liberty being reserved to come back to this Tribunal if the appeal did not yield any favourable results. This Tribunal, thereupon passed an order on 28.4.1993 granting leave to the officer to withdraw that application with liberty to renew the same if need be at a later stage. The matter then went to the Government of India pursuant to an appeal filed by the officer on 30.4.1993 [Annexure A-5] and after pending for sometime it came to be disposed of on 20.8.1993 as per Annexure A-6. The dismissal of the appeal as aforesaid signalled the start of a fresh proceeding before this Tribunal through this application in OA No.764/93 which is presently under consideration. The impugned order of the Government of Karnataka has been upheld on appeal by the Government of India. However, the officer has not chosen to assail the decision of the Government of India not to interfere in the matter but that of course will not deter us from deciding whether the impugned order of suspension is tenable on facts and in law.

4. As we have already mentioned, the impugned order is assailed on two grounds viz., [1] on the ground of mala fide and [2] for want of prima facie material and as per Shri Rajeev Hegde, learned counsel for the applicant, there is not merely no prima facie material but there is no material at all and it is a case of

non-est factum ie., nothing exists except a total vacuum. It is settled law that judicial review of administrative orders admits of two parameters for assessing such an order. One is whether the order is mala fide and the other is whether there is some material or even a scintilla of material that could support or justify administrative action as a consequence of which somebody is hurt and in this case the officer. These would be the two prime factors that arise for determination. In this connection we refer to the latest pronouncement of the Supreme Court on the topic in the case of U.P. RAJYA KRISHI UTPADAN MANDI PARISHAD & OTHERS V. SANJIV RAJAN JT 1993[2] SC 550, a decision to which we ourselves invited the attention of Shri Rajiv Hegde for the applicant and later on learned AG took the opportunity to invite our attention to that very decision. It was a case in which the High Court had stayed an order of suspension which the the Apex Court, on appeal, revoked. Incidentally, the Court dealt with the right to pass more than one suspension order making it clear that if one order is rescinded on the ground that at that stage the evidence appearing against the delinquent was not sufficient or for any other reason it would not deter the Government from passing a de novo order. The court held thus:

"Suspension from service

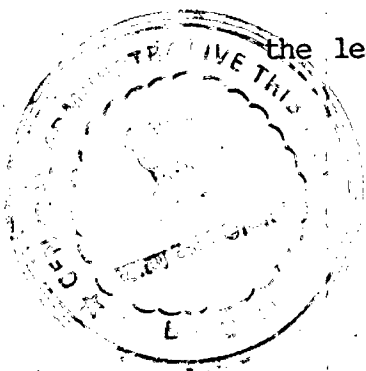
b
Suspension order - Embezzlement of funds by the respondent - High Court revoked the order of suspension - Interference by High Court held unjustified - Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.

... In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their

benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the 1st respondent-employee's representation. However, after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusions to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no justification for the High Court to revoke the order of suspension."[emphasis supplied]

The limitation set out by the Supreme Court in regard to interference in the matters of suspension as indicted in the decision supra leaves, we think, very little room for the Tribunal to launch itself on some kind of expansive investigation of the order of suspension. At all times we should bear in mind the limitation that is to say whether the order of suspension is vitiated on mala fides or it has been made without there being any discernible basis whatsoever that could possibly sustain the order of suspension. While probably any employee treats himself as a repository of power to stop an employee from working by placing him under suspension, it is but natural there are rules which govern the exercising of disciplinary jurisdiction and we take it that the power of suspension falls within this disciplinary jurisdiction about which there is no doubt and, therefore, that order is above and beyond reproach even when assailed on grounds of mala fides and absence of prima facie material etc. We are, however, strictly enjoined not merely by the decision of the Supreme Court referred to supra but even otherwise that the orders

of the Administration should not be needlessly meddled with. Having set ourselves the legal parameters within which the investigation of the tenability of the impugned order should proceed, we might at this juncture refer to a very strong argument advanced on behalf of the State of Karnataka by the learned AG that submissions made on behalf of the officer going to the extent of assailing the very order of LA of instituting the case under the Prevention of Corruption Act and thereafter conducting investigation in a very high handed manner — all these be presumed to be without actually having received the nod of the LA and was being indulged in by the head of the Investigating Wing Shri Jagannathan, R-3, we may state that the assumptions of the officer as aforesaid are really without any basis since at each step the LA appears to have been consulted and as a matter of fact even the registration of the case under the Prevention of Corruption Act itself had been done with the concurrence of the LA since the file reveals that Shri Jagannathan had consulted the LA in the matter and it was only thereafter the case itself came to be registered and what followed later vis a vis the first step in the investigation being the raid on the house of the officer, appears to have been done with the aid of a search warrant taken from the court of the Chief Judicial Magistrate, Bangalore who probably had the power and there is no controversy about it. That step can hardly be assailed at any rate before us as having been taken without the sanction of law. While the facts do not really admit this controversy at all, as pointed out by the learned AG, these are matters which are really not within



our jurisdiction. Our jurisdiction is limited only to ascertain whether the order of suspension which affects the conditions of service of the officer is tenable and valid in law. It would, therefore, be unnecessary to refer to the antecedent progress the case had made through the official labyrinth and all the steps taken prior to passing of the suspension order starting with the chain of investigation are matters as regards which we really do not have any supervisory jurisdiction is again an aspect that admits of no controversy at all. That is a matter which lies within the jurisdiction of the High Court presumably acting under Section 482 CrPC under which inherent jurisdiction of the High Court can be invoked for deciding the tenability of such order. This submission of the learned AG is also fortified by the decision of the Supreme Court in STATE OF HARYANA V. BHAJAN LAL AIR 1992 SC 604. The Supreme Court in that case while pointing out that investigation of a cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions of Chapter XII of the Code and courts are not justified in obstructing the track of investigation when the agencies are well within their legal bounds as aforementioned. It was also pointed out therein that a petition under Article 226 of the Constitution filed praying for quashing of investigation into a cognizable offence at a stage when all the evidence available was that a complaint regarding an offence under Section

5 of the Prevention of Corruption Act involving several disputed questions of facts still to be investigated the court held that it was not open to anyone to interfere in the matter at that stage because it was still premature and whatever investigation had been done they could not be quashed on the basis of some statements even if made on oath. In passing the court spelt out guidelines stipulating the different circumstances under which the quashing of an FIR can be done. The court's dicta in this behalf, are found in the head notes C, D and E of the said decision. Suffice it to notice that even in exercise of the power of High Court under Section 482 CrPC it would be extremely difficult to quash or stop an on-going investigation into a criminal offence for even if that power is available it should be exercised sparingly and that too in the rarest of rare cases vide observation at page 606 of the said judgment. We respectfully follow the dictum of the Apex Court in the aforesaid case of State Vs. Bhajanlal and hold that it is not even open to us to venture to criticise the initiation of a case under the Prevention of Corruption Act or the steps taken by the LA Police to investigate into the matter further. It being now clear that the few peripheral controversies raised on behalf of the applicant and joined in effectively by the learned AG, we now go on to consider the two main issues that confront us in this case viz., whether the order of suspension is vitiated because of mala fide and whether the Government in exercising its discretion by passing the order of suspension has really acted in a vacuum and without any kind of circumspection?

5. Mala fides is alleged against three different persons,

The first of whom is Shri Veerappa Moily, presently the CM of the State of Karnataka. Next in the order is the CS Shri J.C. Lynn and the third individual who is said to be so hostile towards the officer is Shri Jagannathan, an IPS officer then holding the rank of Additional Director General of Police. We are informed by Shri Motigi, that right now the status of Shri Jagannathan has further improved and he is now working as the Director General of Police, a circumstance, of course, we are not concerned with. We may also mention that all these three individuals have been impleaded by name and not merely by office. As against each one of them, the officer has made a variety of allegations particular to that individual and the only common thread which binds the three individuals together is that each of them is severally and jointly ill-disposed towards the officer and the result of such total malice towards him has assumed a concrete form in the shape of the order of suspension which is presently impugned in this application.

6. Before we proceed to set out the allegations made against each of these respondents we may add that each of them has filed separate objection statements denying all the allegations as totally false and untenable. Before we go into the dialectics of these allegations it is proper to bear in mind that allegations of mala fide when made must be supported with some kind of where-withal and, not merely that, the allegations per se must be precise, manifest and cogent. Vague allegations that something happened somewhere, sometime ago and attributing the present plight to something that happened years ago are liable to be

dismissed like the story of lamb and wolf in which the wolf accused the lamb of abusing him. When told that at that point of time the lamb was not born, the wolf, it appears, said that if it was not he it was his grand father. We find this nursery tale to be apposite and attracted vis a vis the allegations made herein. The allegations of mala fides should be defined distinctly, clearly, unambiguously, categorically and cogently as otherwise it will not lend credibility and deserve to be dismissed in limine is what a catena of decisions found laid down and it is not necessary to burden this judgment with all of them except the few to which our attention was drawn by the learned AG. The first decision referred to is of P.V. JAGANNATHA RAO AND OTHERS V. STATE OF ORISSA AND OTHERS AIR 1969 SC 215. That was a case in which a Commission of inquiry was instituted by an incoming government against the members of an outgoing government. The constitution of that commission of inquiry was, it was alleged, the result of political rivalry. Referring to the argument, this is what their Lordships of the Supreme Court stated —

"The existence of political rivalry between the ruling party and the leaders of the ex-ruling party into whose doings the inquiry commission is constituted to enquire, is not in itself sufficient to hold that the appointment of the Commission of Inquiry is illegal. When after the perusal of the affidavits of the parties, it is clear that the appointment of the Commission of inquiry was not due merely to the existence of political rivalry of the parties but was impelled by the desire to set up and maintain political administration of the State, and that the latter was main object of the appointment of the Commission and not 'the character assassination' of the leaders of the ex-ruling party, the appointment of a Commission is not ultra vires or mala fides. [1968] 34 Cut LT 666, Affirmed."

high standard of
moral conduct in the

This decision brings forth in bold ruling the implication that an act even if tainted with malice if it is otherwise justifiable in the interest of good administration, the fact that it is vitia-



ted with a tinge of malice is not per se a circumstance leading to striking down the action taken in that behalf. The next decision referred to is the often quoted decision in the case of E.P. ROYAPPA V. STATE OF TAMIL NADU AND ANOTHER AIR 1974 SC 555, relevant observations ^{being} at paras 92 and 93 on page 587. It may be recalled that in that case the Chief Secretary of Tamil Nadu was displaced by an incoming Government. The outgoing Chief Secretary, being dissatisfied with the treatment meted out to him, refuted the action taken by the new Government transferring him, according to his case, to a very unimportant position, had carried the matter upto the Supreme Court and the points made out on his behalf were that everything was done just to humiliate him by the incoming government due to malice entertained by the new government towards him. It is pertinent to notice here that their Lordships did notice in that case that there were some circumstances which did create some suspicion about the propriety of the action taken in shifting the Chief Secretary from that vantage posting but still they said "these and a few other circumstances do create suspicion but suspicion cannot take the place of proof and, as pointed out above, proof needed is high degree of proof". Thus it may be pointed out that a man who makes allegations of mala fide takes upon himself the burden to prove that and that burden is very heavy and cannot be said to be discharged by making bald allegations not supported by any material of an acceptable character. We must now refer to a much later decision of the Supreme Court in STATE OF MAHARASHTRA V. DR. BUDHIKOTA SUBBA RAO reported in [1993] 3 SCC 71. Suffice it to refer to the head note which deals with this aspect of the matter.

"Mala fides violating the proceedings may be legal or factual
Former arises as a matter of law where a public functionary

28

acts deliberately in defiance of law without any malicious intention or improper motive whereas the latter is actuated by extraneous considerations. But neither can be assumed or readily inferred. It requires strong evidence and unimpeachable proof. Neither the order passed by the Single Judge granting ex parte order of stay preventing opposite party from going abroad was against provisions of law nor was the State guilty of acting mala fides in approaching the Single Judge by way of writ petition against an order of trial Judge permitting him to travel abroad."

We may conclude the point by referring to one more decision of the Supreme Court itself in the case of M. SANKARANARAYANAN V. STATE OF KARNATAKA AND OTHERS reported in [1993] 1 SCC 54 where this principle was once again reiterated by the Supreme Court. The said case exemplifies the need for alleging and establishing the facts upon which it is possible to draw a reasonable inference of malice in passing the impugned order. Suffice it is for us to refer to Head note which deals succinctly with the ratio of the decision:-

always
"It may not be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. There was no sufficient material from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. The fact that some of the suggestions of the appellant Chief Secretary in the matter of posting of senior bureaucratic officers of the State had not been accepted by the Chief Minister of the State alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary it cannot be held that such decision is per se illegal or beyond the administrative authority."



We may take this opportunity to emphasise the observation of Supreme Court supra where it was found that suggestions made by a Secretary to a Chief Minister, if any, are not accepted does not by itself constitute any foundation for an argument that subsequent action taken to hurt the interest of the officer was clearly designed. In our own Tribunal there was occasion to consider the scope for the court to interfere with an order of suspension in the case of M. SANKARANARAYANAN V. STATE OF KARNATAKA AND OTHERS reported in [1992] 20 ATC 440. There it was laid down that mere sufficiency or insufficiency of evidence justifying to support administrative action is not a ground for interference and that dissimilarity of views between a Secretary and Chief Minister need not necessarily lead to an inference of mala fides. To sum up, the legal requirements in adjudicating the plea of mala fide as pointed out in the decisions cited supra indicate that mala fides cannot be readily inferred and could only be inferred if there are clear and cogent pleadings in that behalf from out of which an inference of mala fides can be drawn provided the allegations themselves are entrenched in appropriate actual matrixes. Thus having armed ourselves with the legal technology required to decide the position of mala fides we now go on to consider the facts.

6

7. Learned counsel Shri Rajiv Hegde for the applicant has taken the trouble to summarise the allegations made against each of these individuals ^{ad}seriatim by producing ~~in~~ a recorded statement and we are indeed grateful to him for the assistance rendered. The first of the allegations is in para 6(6) of the application relating to the functioning of the officer as Managing Director, Karnataka State Small Scale Industries Corporation in 1973-74.

At that time Shri Veerappa Moily, R-1, is stated to be the ex-officio Chairman of the Corporation in the capacity of a Minister in the then Government. The case of the officer is that very often Shri Veerappa Moily used to interfere with the running of the Corporation by the Managing Director and had a tendency to butt in at all times. It is almost suggested that he literally poked his nose frequently in the administration trying to order the officer asking him to dispense some favours to his favoured coterie. It is said that since frequent interference in the administration of the Corporation by the Minister was greatly resented by the officer he had made known his keen displeasure to Shri Veerappa Moily, Minister and Chairman of the Corporation. It is said that this unpleasant relationship Shri Veerappa Moily had in the year 1973-74 when he was the Chairman of the Corporation with the officer who was the Managing Director had led to the instant case to reeking vengeance against this officer by placing him under suspension. This has been truly and well denied by Shri Veerappa Moily in para 3 of his objection statement where-^{had} in it is stated that he ~~never~~ interfered with the administration by the Managing Director and that he had never resorted to issuing of fiats to him. We may in this context adumbrate to one portion of R-1s statement as under;

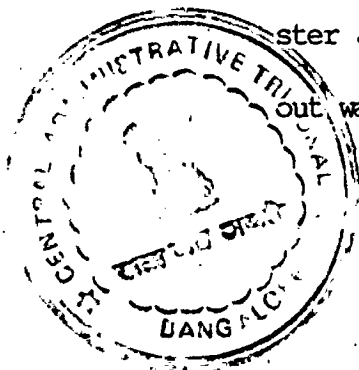
"It is false to allege that the 1st respondent had resented the alleged ~~objections~~ raised by the applicant. The 1st respondent being the Chairman of the Corporation has certainly discharged his functions and exercised his powers as Chairman within the four corners of law and no Managing Director could ever object to such exercise of power by the Chairman. The allegations are significantly vague and pertain to a period which is about 20 years ago."

We must dismiss this allegation as totally opportunistic and without any force apart from falling short of legal requirements of a valid plea of mala fide. For example we would expect the

officer to at least advert to one or two occasions when Shri Veerappa Moily is said to have passed illegal orders which he refused to carry out. What is more, all this appears to be history of antique vintage relating to the year 1974 and we are listening to an argument based on mala fides in this application instituted some 19 years later in the year 1993. It is not improbable that such a long interregnum might have also led to the officer having literally forgotten about what had happened some two decades back and that is why he could not say anything more than making vague allegations that Shri Veerappa Moily was interfering, that was not to his liking and that he had told him that it was not correct but we cannot certify such allegations to be valid and at any rate it cannot stand scrutiny of the test of law as settled in a number of decisions that have laid down the parameters on the basis of which this aspect has to be examined and when examined from that angle the case hopelessly falls short of the required standard and, therefore, we must discard the allegations of this nature levelled against Shri Veerappa Moily while functioning as Chairman of the Corporation. Before we advert to the argument of the learned AG who pointed out that Shri Veerappa Moily being the Chairman of Karnataka Small Industries Corporation, however much the officer resented his interference, nothing would have prevented the Chairman in carrying out his own wishes and he could have done all that even without the cooperation of the officer. We think there is some merit in that argument.

8. The second allegations made is that in the year 1991-92 when the officer was Secretary to the Housing & Urban Development Department, Shri Veerappa Moily who was then a mere Cabinet Minister in charge of Education & Parliament^{ary} Affairs and as such

had nothing to do with the affairs of the Housing and Urban Development Department, had once again interfered and immensely pressurised the officer continuously to regularise the highrise building known as Bhakthavar building contrary to the decision of the High Court of Karnataka which was also upheld later by the Supreme Court in the well known case of B.K. Srinivasan in which the Supreme Court had specifically ordered demolition of a few floors in that building after reaching a finding that seven floors in the building had been constructed illegally. The allegation made is that Shri Veerappa Moily was bent upon saving that building from demolition although ordered by the Supreme Court. He, therefore, wanted the assistance of Secretary, Housing & Urban Development to frame some legislation which would save that building from demolition. The officer says that he deeply resented the suggestion of Shri Veerappa Moily and the active interest he took in piloting that motion trying to enlist the assistance of this officer to gain an illegitimate end. Therefore, it is urged that Shri Veerappa Moily being disenchanted with the officer became so spiteful so much so the moment he became CM in November 1992 the first thing he did was to ensure this officer met his doom by suspending him and for that purpose he actively enlisted the assistance of Shri Lynn, CS and the DGP, Shri Jagannathan, and it is the combination of these three evil planets that had conjured and ensured his downfall. All these have been denied by Shri Veerappa Moily in his objection statement at paras 4 and 5 wherein he has stated that in a routine manner a meeting was called in his chamber in which he was joined by the ^{then} HUD Minister and the then Law Minister. It was a meeting called to find out ways and means as to what should be done in regard to highrise



buildings in Bangalore which enjoyed a dubious status having almost reached skyhigh, sporting dozens of storeys as characterised by the decision of the Supreme Court in Srinivasan's case relating to the Bhakthavar apartments. We called for the relevant file from the Secretariat and found that the minutes of the proceedings of the meeting were recorded by the officer. True, in one of files he had noted ^{earlier} that there will be excess flooring area in the Bhaktavar building and because it has been ordered to be demolished by the Supreme Court any laxity in implementing that order would invite contempt proceedings against Government but when a meeting was held, admittedly under the Chairmanship of ShriVeerappa Maily, Minister for Education and Parliamentary Affairs, it was attended among others by Law Minister, HUD Minister and Secretary, HUD, who was none other than this officer. The minutes show what transpired in that meeting and has been recorded by the officer himself, so much was ungrudgingly accepted before us by the officer himself. We have seen the minutes recorded on 20.3.1992. Except recording what transpired at the meeting there is nothing in that indicating that at any stage of the meeting the officer took a stand opposite to the on-going discussion at the meeting. The officer refers in his application to some kind of principled stand he took in opposing the move to save Bhakthavar building and also of the other high rise buildings. We have gone through the minutes maintained by the officer himself not once but more than once and we have not seen anything there that indicates his personal views whatsoever they are. He had simply recorded what went on and just signed the minutes. It is stated that illegal high rise buildings constructed upto the year 1991 should be regularised and regularisation should be done case by case by a committee to be constituted by Government which would take

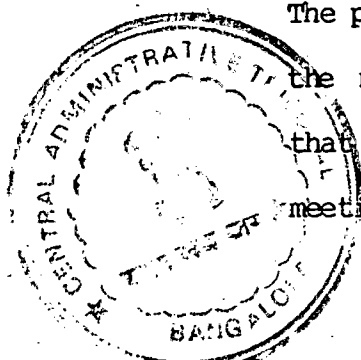
34

into account points like technical stability of the building, area, etc. Beyond that we see nothing in the minutes that in any way attributes to the officer any intention of opposing the views of the others at the meeting. Therefore, it is quite safe to infer the so called desire, which the officer says, unholy desire of Shri Veerappa Moily, to hurriedly pass some kind of legislation that would save Bakthavar and other buildings in Bangalore much to the consternation of this officer who opposed such a move is really not borne out by the minutes and almost appears to be a figment of his imagination. It is also pertinent to note that the officer makes an allegation that he was forced by Shri Veerappa Moily to attend that crucial meeting. But we see no such proof of the man having been pressurised either by Shri Veerappa Moily or somebody on his behalf to attend the same. All that we find is a letter from the Private Secretary to the Minister for Education and Parliamentary Affairs soliciting the presence of the officer. We will extract the said letter which should put an end to the controversy. The letter reads thus:

"I am directed to state the Hon'ble Minister for Education has convened a meeting to discuss the subject cited above on 20.3.92 at 4.30 PM in his chambers. A copy of the brief note on the subject is enclosed herewith.

I request you to kindly make it convenient to attend the meeting."

The presence of the officer was because he was requested to attend the meeting and he recorded the minutes which do not indicate that he had opposed at any time whatever that went on in the meeting. Therefore, the allegation that Shri Veerappa Moily



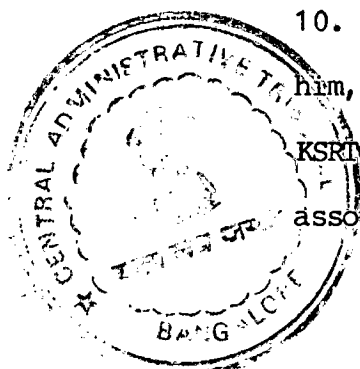
having insisted on saving some high rise buildings from demolition although one of them was ordered to be demolished by the Supreme Court to pressurise the officer who was then the Secretary, HUD, to come up with some ideas which would help in passing some appropriate legislation contemplated in this behalf appears to be wholly untrue. We notice from the allegations made by the officer, he even asserts, that Shri Veerappa Moily had no business to call for that meeting at which the presence of this officer was required to consider ways and means of making legislation to save these high rise buildings because Shri Veerappa Moily was not then the minister connected with HUD at all for which there was a separate minister in-charge of that department. He could not, therefore, have interfered with the working of the department which would surely indicate the undue interest the man entertained presumably to help the builder of a building which was earmarked for demolition. No doubt this allegation has been denied but what is interesting to notice is if Shri Veerappa Moily did not have the competence to call for this meeting and had, however, voluntarily convened such meeting, it appears to have been willingly attended by the departmental minister and not merely that he was also accompanied by the Law Minister who was supposed to give advice in the matter of legislation. If two cabinet ministers agree without any demur to attend the meeting called by Shri Veerappa Moily, the aforesaid criticism of the officer really comes surprisingly from a quarter from which it cannot emanate at all. An officer of the Government cannot say that he will not attend a meeting called by a Minister with his own minister attending the said meeting. It is a case of arrogance by an officer to say that a minister who had no business to meddle with his department had called for a meeting. If Shri Veerappa Moily

36

was meddling with a department not under his umbrella the officer should have expressed his resentment by not attending that meeting but that he did not do and he meekly walked in and took his place among the members of the Committee one of whom was his own minister. Even at this stage he could have told his own minister that this minister had no business to call for the meeting. That advice also he appears not to have given to his own minister. It seems to us that all this is much ado about nothing. We must, therefore, discard from our consideration the allegations made against Shri Veerappa Moily vis a vis framing this officer with the assistance of Sarva Shri Lynn and Jagannathan. We see no substance in this argument of his counsel.

9. As we mentioned in the earlier part of this judgment, Shri Lynn was the selection of the Cabinet and was picked up from a large list of 10 people and Shri Jagannathan would have also come in as in the usual course, he being an officer of the rank of Addl. DG was brought into LA, picked up from amongst several others. It appears earlier he was Addl. Secretary [Home], he was picked ^{up} to head LA, Vigilance Wing, which we do not think should be a development causing raising of one's eyebrows. We see no way Shri Veerappa Moily could have moved in to engineer the downfall of this officer by placing him under suspension. This brings to an end the catena of allegations made against Shri Veerappa Moily, the present CM of the State of Karnataka and we must wholly exonerate him of all the allegations of mala fides made against him and hold none of them to be established.

10. We now move on to the case of R-2, Shri Lynn, CS. Against him, the allegations are that when Shri Lynn was the Chairman of KSRTC in the years 1981 and 1982 during which period, the R-3 was associated as the General Manager, KSRTC, both of them by their



joint mismanagement had led the Corporation into sustaining a loss of about Rs.10 crores whereas the officer who was General Manager for about two years from 1975-1977 had managed the affairs of the Corporation so well it had resulted in a profit of Rs.40 lakhs. It also transpired that during the stewardship of Sarvashri Lynn and Jagannathan during 1981 and 1982 this officer continued to be associated with the Corporation as a Director on the Board of Management and he attributes his present dilemma to the fact that during the meetings of the Board he had come up against the methodology adopted by Sarvashri Lynn and Jagannathan in running the Corporation and found that this twosome were thoroughly mismanaging the Corporation and he had become a marked critic of these two officers as on more than one occasion he had criticised them for their inefficient management of the affairs of the Corporation. Out of sheer curiosity we asked the learned Government Advocate to procure for us the figures relating to the financial status of the Corporation in the later years. The Government Advocate was able to procure some information over telephone and has passed it on to us. It makes very interesting reading. Following is the chart of the losses sustained by the Corporation:

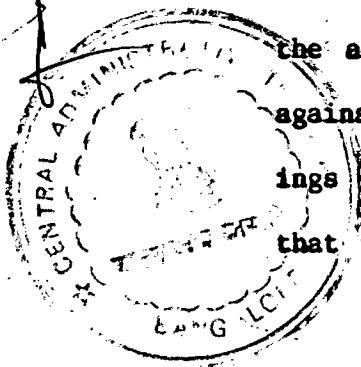
1991-92	..	Rs.19.9 crores
1992-93	..	Rs.61.29 crores
1993-94	..	Rs.63.84 crores

Cumulative losses as on 31-3-1993 is Rs.274.82 crores. None can be happy with these figures which are somewhat telling and indicate that there is something seriously wrong with this Cor-

poration which is threatening to become the 'Iravatha' of the Karnataka State Government and we only hope that it would soon turn the corner and would cease to be the white elephant. We have just referred to these figures to point out that the gathering of losses in a public sector corporation is something which is not very unusual but on the other hand making profits is something considered to be out of the ordinary. In this regard, if the management of the affairs of the Corporation by Sarvashri Lynn and Jagannathan in 1981 and 1982 had indeed resulted only in Rs.10 crore loss, one cannot blame them. In the reply statement of Shri Lynn he mentions the following which we think it proper to reproduce herein-

"To judge as to whether an organisation is competently managed or not, one should examine the prevailing industrial situation like labour unrest, public strikes, etc. Respondent-2 became Chairman of the KSRTC and Respondent No.3 the General Manager of the KSRTC several years later in 1980 and 1981 respectively and were concerned with the functioning of the organisation at that time and not with what it was in 1975-77".

We think the explanation offered above is quite plausible and cannot be shrugged off at all. When this aspect of the matter was very keenly presented before us and argued with considerable vehemence by Shri Rajiv Hegde, we asked him whether there is any material to show that the officer had at any time expressed his resentment by recording his views taking exception to the way in which the affairs of the Corporation were run during the stewardship of Sarvashri Lynn and Jagannathan but were told that there was no such record which would possibly bear out the active criticism said to have been mounted by the officer against Sarvashri Lynn and Jagannathan in any of the board meetings in which the officer had participated. This only shows that this again is an allegation which not merely lacks credi-



bility and is something which the officer has not been able to make good. Again we notice that he was now pulling out something from the back of his head, an event which was more than a decade old, something which happened in the years 1981 and 1982 when he is said to have crossed swords with Sarvashri Lynn and Jagannathan. Well, all that we can say is it might be true or not but in such a situation anybody asked to accept the allegations of mala fide with such vague features will call for proof. On the other hand, the officer had taken the liberty to write to Shri Lynn a letter in which he took the opportunity of deriding and blaming him for the present situation, letter as at Annexure-A7. That letter received a polite reply from Shri Lynn produced at Annexure-A10. In the said letter Shri Lynn pointed out that he had nothing against the officer and remembered one occasion when he helped him to get some foreign assignment and that all that he did when the application of the officer for voluntary retirement came up for consideration was he advised the CM that "We should check with the LA whether there was any evidence against you which could embarrass the Government. It is the Lokayukta that reported that it wished to proceed against you". But, while we should have thought that the letter did not cause any flutter, it appears to have stung the officer somewhat because the officer wrote another letter as at Annexure-A8 in which he castigated Shri Lynn for taking a hostile attitude. The correspondence appears to have ended with that letter because Shri Lynn very wisely refrained from replying to that letter. We have referred to these letters to indicate that basically the CS, Shri Lynn, had nothing at all against this officer. Nothing at all to motivate him from dealing with him with an evil eye. He need not have referred in his reply to the advice he had tendered to the CM about accepting the officer's request for voluntary retirement but he still referred to it and stated what advice he had given. It only shows the candid manner in which this officer was dealt with.

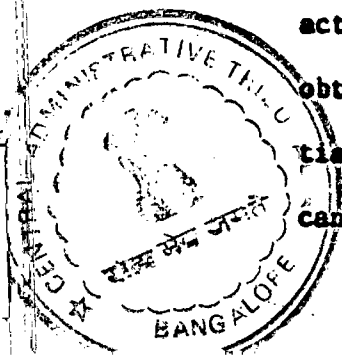
11. We had in this connection pointed out to the learned AG the efficacy of keeping this officer under suspension enjoining him to stay back without doing any work, enabling at the same time drawing from the coffers of the state a goodly sum as subsistence allowance. We therefore, asked him to ascertain from the Government its views in the matter. The learned AG who had taken time to take instructions from Government in that behalf told us thereafter that Government did not think it appropriate to revoke the suspension order for the present. It appears when the matter was put to Shri J.C.Lynn, the Chief Secretary, he constituted a committee of three Secretaries of Government, all senior I.A.S. officers to go into and advise Government as to whether it was desirable to discontinue the order of suspension and reinstate the officer in service. That committee after considering all aspects and having regard to the stage at which the investigation was pending had, it appears, advised Government that it was not desirable to revoke the order of suspension and that on the other hand, Government should continue the same for some more time, but this is apart from the fact that at one stage, Government itself filed a memo stating that if the investigation was to continue beyond May, 1994 it would revoke the order of suspension and reinstate the officer in service. As mentioned earlier this offer was not acceptable to the officer. We were then told that in the circumstances Government would not be bound by that memo. Be that as it may, we ourselves have perused the proceedings of the three Secretaries constituted to consider the question as to whether the suspension of the officer should be revoked or not. The Committee with three senior Secretaries, as mentioned above,



took a decision to advise the Government to continue the officer under suspension. But, that is not the point. What we now emphasise herein is that Chief Secretary Shri Lynn against whom there had been a relentless attack characterising his role herein as one totally tainted by mala fides, had chosen to disassociate himself with the latest turn in the matter viz., revocation or continuing the officer under suspension. If he was really so keen, as urged, to lower the sword on the officer ultimately, he would surely not have let go this opportunity of presently ensuring that status quo in the matter of suspension continued. This circumstance or conduct on the part of Shri Lynn would show that he was totally unbiased and was one who never bore any malice or prejudice towards the applicant. We think we need not consider this kind of ill motivated allegations accusing him of malice. We, therefore, conclude that the allegations of mala fide against Shri Lynn are ill made and ill canvassed and they are all unfounded and, therefore, we discard the same.

12. The last of the trio who is also accused of casting an evil eye on the officer is Shri Jagannathan, the Police Officer, now DGP. We sincerely wished that at least against him, the kind of allegations made should not have been made because the officer has made allegations against the wife of Shri Jagannathan that Sat. Jagannathan had converted a part of their own residential house into a teaching institution contrary to some provisions of the Karnataka Town Planning Act. He says he had advised Shri Jagannathan against continuing with that teaching institute in his house bringing to his notice that it was contrary to law, etc. This is the allegation made and Shri Jagannathan has denied the same. He said that the

officer had no occasion to bring to his notice the alleged contravention of the Town Planning Act provisions and that as a law abiding officer he had informed the Government of Karnataka of the said development viz., of his wife having made use of a part of their residential house for running an institute, as elaborated in para 4 of the reply statement. From the above, one thing becomes obvious that Government had full knowledge of what was going on in the house of Shri Jagannathan and that Smt. Jagannathan was conducting a training institute under the aegis Shiksha Computer Centre and there was no hide and seek and that Government had not found any fault with Smt. Jagannathan converting a part of their house for conducting vocational training classes. We do not know how the officer came to take exception and nurtured a grievance against Shri Jagannathan as to what was happening in the house. We think there is no law which can prohibit converting a residential house into a teaching institute by the land lord. If there is a change in the land use it may entail attraction of some penal provisions under some Act. If there is a building which was used as residential house and later part of it was used as a training institute, we cannot for a moment see as to how conversion of a dwelling house into a technical institution in which instructions were imparted to some trainees could possibly attract the provisions of the Karnataka Town and Country Planning Act. For all that we know that it might have resulted in contravention, if it is a contravention, of the provisions of the House Rent Control act which enjoins permission of the Rent Controller to be obtained for converting a residential house into a non-residential house or vice-versa but this is not the case of the applicant. We see little or no substance in the aforesaid allegation



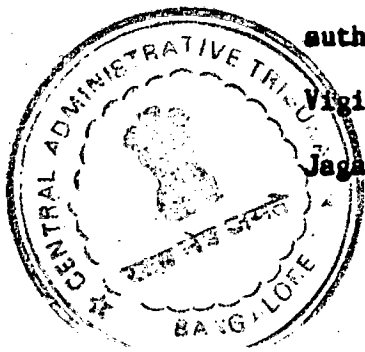
and what is more, the name having been denied by respondent-3, we do not think there is anything of substance in the assumption of this officer who appears to have approached everything with a jaundiced eye. Further, this man, the bold man that he was, appears to have told Shri Jagannathan and aired his apprehensions that very shortly he was going to be the object of an organised raid on his house by LA police and had told him that he had not done anything to warrant such an unwelcome visit by the LA police and so he wanted an assurance from Shri Jagannathan that no such thing was in the offing. He says that Shri Jagannathan had at that time assured the officer that he would not come to any grief at all at his hand and that he would not do anything unfair which was not warranted by law. But, what the officer says is after having returned from the office of Shri Jagannathan with this kind of assurance, the very next thing that Shri Jagannathan had done was to send his henchmen behind his back with orders to raid his house, the raiding party headed by Shri Dakshinamurthy, Dy.SP, who is personally investigating into the affairs of this officer. The officer asserts that the raid caused him a lot of humiliation without any justification more so when he had nothing to hide as he had placed everything before the Government like an open book recording all the developments in his life and kept the Government informed and yet he had to suffer this kind of mortification which he thinks is mainly due to the malicious attitude adopted by Shri Jagannathan, the reason being the advice he gave to Shri Jagannathan about the contravention of the provisions of the Karnataka Town Planning Act by his wife and he had also criticised Shri Jagannathan when he was General Manager of KSRTC for mis-

62

management of which he was guilty resulting in the loss of crores of rupees during the chairmanship of Shri Lynn who had shared the responsibility for such mismanagement. We have already dealt with the case of Shri Lynn and in so far as Shri Jagannathan is concerned all charges against him have been denied although one thing Shri Jagannathan did admit was of the officer's visit to his office in LA on 8-1-1993 to voice his apprehension about the pending investigation into his affairs and that the air was rife with rumours of his house going to be raided surely etc. But, Shri Jagannathan says that at that time he had simply stated that he would not do anything unfair and contrary to justice. To quote Shri Jagannathan vide his statement at para 3 -

"It is confirmed that the applicant met the respondent on 8-1-1993 in his chambers by prior appointment. It was explained to the applicant that the respondent was duty bound to process information and complaints received by him, that all informations received would be handled with care, sense of fairness, justice and circumspection and that there was no pressure from any quarters whatsoever to do any particular investigation against any particular officer".

The house of the officer was raided, nearly 2½ months after this dialogue between Shri Jagannathan and this officer had taken place on 8-1-1993. The aftermath can only be attributed to the performance of duty by Shri Jagannathan as investigating authority who was in-charge of these matters being part of the Vigilance Wing of the Lokayukta. There is no question of Shri Jagannathan having broken faith with this officer or having



gone back on his words or transgressed his own assurances. This has been a routine investigation, for which necessary steps had been taken and we have adverted to all of them and found nothing wrong in what had been done and there is no room at all for the officer to complain against Shri Jagannathan at any rate to drive him up the wall. We, therefore, think the allegation of mala fides against Shri Jagannathan apart from being vague are also not established, even in the manner of speaking. Therefore, we reject the contention that the action of Shri Jagannathan had led to the suspension of the officer and was vitiated by mala fides. Now coming as we do to the end of the first question formulated for our consideration and on that question our answer must be in the negative. We thus record a finding that the case of mala fides against Shri Veerappa Moily, the Chief Minister of Karnataka, Shri J.C.Lynn, the Chief Secretary and Shri R.Jagannathan, Director General of Police, Lokayukta have not been made out and are also found to be baseless.

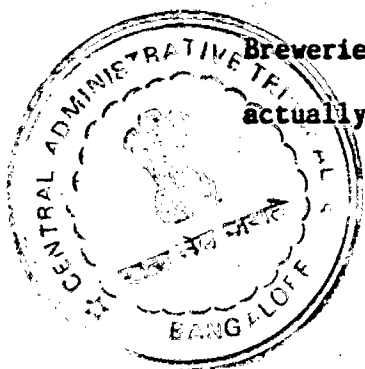
13. **POINT NO.2:** Material in support of the impugned order. We have earlier pointed out that the order of suspension which is purely an administrative one, although passed under the Service Rules, has necessarily to be judged from the stand point of existing material that could possibly support the said order. We are at this stage not expected to go into it with a fine comb to scan the material on the basis of which the order of suspension has been passed. Suffice it to notice, against this officer a case under Section 13(2) of the Prevention of Corruption Act, 1988 has been registered, a First Information Report



has been submitted to the competent Court and he is put under investigation. The basis on which the investigation is taken up was a source report made by the Investigating Officer Shri Dakshina Murthy, Deputy Superintendent of Police in the Karnataka Lokayukta on 15-3-1993. It mainly targetted on 4 items. The first item was construction of a multi-storeyed house by the officer in a prime locality of Bangalore - Indiranagar, at an estimated cost of Rs.30 lakhs. The second item was investment of a sum of Rs.16.51 lakhs in shares and debentures. The third item was investment in M/s Sitansu Mohan and Company (Utkal Breweries Private Limited) in the sum of Rs.9.63 lakhs and the fourth item was investment on purchase of site (including the construction of earlier house) worth about Rs.3.20 lakhs, all aggregating to Rs.59.34 lakhs against the discernible income the officer had earned by way of salary amounting to Rs.47.70 lakhs, which included his borrowings etc. etc. but, the actual salary being about Rs.12 lakhs for the 27 years of his service put in as an I.A.S.officer, starting from 1966 upto 1993. The construction of the house is admitted by the officer. The only difference is the estimated cost. According to him, it was Rs.21.89 lakhs including the cost of the site. He says it was constructed under his own personal supervision, which, therefore reduced the cost of construction because no contractor was involved. It saved costs on that account. He also states that he has taken Government into confidence, he has told them that he had raised a loan of Rs.18 lakhs from Vijaya Bank and had taken an additional loan from Metropolitan Co-operative Society, interest free deposits and gifts. The house itself was later on leased to the State Bank of India on a rental of Rs.43,000

(47)

per month, the information placed at the bar during the course of arguments by Shri Hegde, learned counsel for the applicant. As for the other investments it was denied except the investment in Utkal Breweries Private Limited. We are told that the officer had earlier purchased a site from the Bangalore Development Authority somewhere in 1973-74, constructed a house and then sold it in 1980 for Rs.8.45 lakhs which indicates he was not a man without ample means. He had the necessary means to fund the building at Indiranagar which according to Government is a mammoth one rising to 3 storeys - ground and two floors with a basement. But, according to the investigation the total floor area of the building is about 10,000 sq.ft. We do not now propose or desire to go into the ramifications of the acquisition of the building by the officer. Suffice it for our purpose to point out that the investment of Rs.16.51 lakhs in shares and debentures, which was denied by the officer as non-existent, we find to be untrue because investigation has revealed shares of the value of Rs.13.90 lakhs of Utkal Breweries had been actually taken delivery by the officer and his wife. We are shown the share scrips with the signatures of the couple and that is again not disputed. Very rightly Shri Hegde in his reply maintained, ofcourse, after grudging admission, there was this investment but it was an investment done after borrowing Rs.16 lakhs from a bank called Amanath Co-operative Bank. Later on, the officer having realised that borrowed capital cannot be invested in a private company, had asked the company, Utkal Breweries, to return the money and according to learned counsel, actually to-date the company had returned Rs.5 lakhs and still

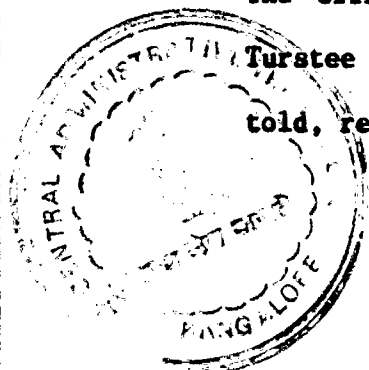


something is due. It was, therefore, urged the shares were not registered, although paid for and that is the reason why the matter was not reported to Government.

14. The applicant does not deny that the investment in Utkal Breweries Private Limited to the tune of Rs.14 lakhs was not reported to Government. All this version, of the Utkal Breweries having been asked to refund the money invested by borrowed capital and the company having returned Rs.5 lakhs was mentioned in the course of Shri Hegde's reply. We may point out here that the officer had taken opportunity to file a lengthy rejoinder controverting various aspects and also by producing some documents. But, why then opportunity was not taken to mention therein the investment in Utkal Breweries Private Limited was done out of borrowed capital and later on realising that borrowed capital could not have been made use of for building up private capital, he had asked the company to return the money and part of the money had also been returned. Shri Hegde could not answer this query. This circumstance leads us to think that the version which is furnished to us now without being mentioned anywhere in writing in the course of the pleadings produced at more than one stage is clearly an after thought and merits no credence. Therefore, the position is, the man and his wife had invested about Rs.14 lakhs in a private company and the investment had not been reported to the Government. It is in those circumstances, he is suspected to have made some illegitimate gain by abusing his office and it cannot possibly be therefore stated that such an inference was not, in the facts and circumstances, open at all so as to assail the impugned

(49)

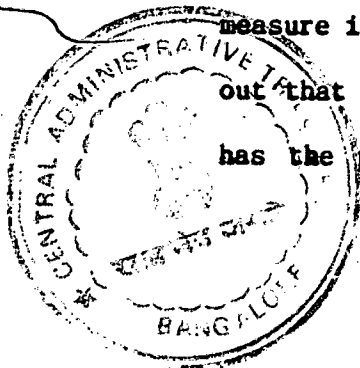
order as something based on no fact and liable to be treated as a nonest factum. The learned AG showed to us from his collection of the information/materials against this officer in particular inviting our attention to the purchase of a house in Lavelle Road, where the officer himself was found staying, a property valued at Rs.30 lakhs by an indenture deed in the name of a company called Patton Investment floated by the officer's in-laws at Bangalore in the year 1992, the share capital being only Rs.200. The case of the prosecution is that the properties appear to have been ostensibly purchased by that firm but actually the means thereof could be traced to the applicant and that the investigation was going on simultaneously in Orissa, Calcutta and Madras and that is why it has spread for over a period of 12 months and had not yet reached fruition. It is pointed out by the learned AG that acquisition of property by Patton Investment Limited was not reflected in the books of accounts maintained by that company although it had transacted a deal of over Rs.30 lakhs nor was it shown in the tax returns of the father-in-law of the applicant who was himself a tax consultant in Orissa advising a number of companies. We are not saying that by this circumstance alone it would be sufficient to nail the applicant finally. But, it would be quite proper to point out that this is not a case of an investigation which is simply drifting like a rudderless ship in a high ocean. Mention was made about a trust started in Orissa in the name and style of Navajyothy Trust to run an educational institution in Orissa. The officer's wife Smt. Patnaik, it appears, was the Managing Turstee of the said Trust. The affairs of the Trust, we are told, received a sudden spurt after 1985 when there was a generous



flow of funds from a number of donors from Bangalore in sums ranging from Rs.5,000 to Rs.1 lakh. The learned AG pointed out to us that as of now the Trust had a cash credit of over Rs.1 crore and was running a private Engineering College. Shri Hegde, learned counsel for the applicant joined in and told us, as of now the officer's wife had disassociated herself from the Trust and, therefore, whatever the Trust does or is doing is of no concern to the officer and his wife. The investigation record indicated that one Shri Shadakshari, a contractor and builder from Bangalore had invested Rs.53 lakhs in Utkal Breweries run by the younger brother of the applicant. Again the investment made by Shri Shadakshari cannot possibly be traced to the applicant is the counter argument. True, but a man from Bangalore is found to have invested so large a sum in a brewery run by the younger brother of the applicant. Though the said investment is shown to have materialised from the firm of a builder at Bangalore, it is probably possible to infer that the said investment was made because of his acquaintance with the officer who was for a long time Commissioner of the Corporation of the City of Bangalore, also holding a similar post in the B.D.A. and was Chairman and Managing Director of Karnataka State Small Industries Corporation, all positions in which there was every occasion for the officer to provide all support to a contractor of his acquaintance. Interestingly speaking, and subject to further investigation it is quite probable, as argued, that the officer had created a number of false fronts and one such false front was Shadakshari through whom his otherwise illegitimate acquisitions had been siphoned off to his own kith and kin. We do not however wish to be understood as holding such a view herein but right now there is a long way to go before

51

such inference can be firmly drawn. Efforts have been made to obtain and identify the sources from which the applicant is supposed to have enriched himself by means which cannot probably be certified as legitimate. But, ofcourse that is again the burden of the prosecution, on which we do not wish to say anything further. Suffice it for us to record a finding that there is prima facie material on the basis of which investigation is going on and during the pendency of the investigation Government had thought it fit to place the officer under suspension so that he may not prove to be an embarrassment to the investigation by remaining in office and what is more if a man is accused of having amassed wealth beyond known source of income, continuance of such a man in office would itself be some kind of a public scandal to which no Government should be a party. The relevant rule, as we have noticed earlier is, sub-rule (3) of Rule 3 of the All India Services (Discipline & Appeal) Rules, 1969 which empowers Government to place an officer against whom an investigation is going on under suspension. The case must satisfy both the conditions mentioned in sub-rule (3) of Rule 3 supra and certainly if a man enriches himself beyond his known sources of income he can surely be branded as having amassed wealth that lacks legitimacy and opposed to morality. These are days in which corruption particularly among the officer class, not to mention others, has almost become endemic and this malaise requires employment of stern measures and one such measure is placing the officer under suspension. We have pointed out that it is an order passed in exercise of an authority which has the power to make that order and we have so far discussed



all the facts of the case indicating that exercise of power in placing the officer under suspension has been legitimately exercised. In this connection we invite attention to the view of Herman Finer in the classic book "The Theory and Practice of Modern Government" Fourth Edition 1991, First Indian Reprint 1977. Dealing with 'discipline, morale, and loyalty of a civil servant, the learned author says at page 869 "Discipline and Morale" -

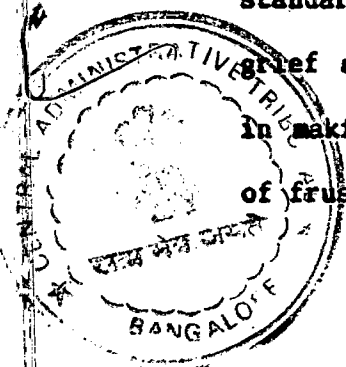
"These rules are ubiquitous and ever-present threats, and the essence of their purpose is subordination and devotion. They are, in a sense, of the nature of a state religion. They are those commandments which issue from the nature of the state, and are based upon the desire to maintain the state. An analysis of the nature of any one of these obligations ultimately ends in revealing some aspect of the general nature of the state - whether it be authority, or order," etc. etc.

Referring to a decision in Gregory's case, the learned author refers therein -

"The service exacts from itself a higher standard, because it recognises that the state is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. It was laid down by one of His Majesty's Judges in a case some few years ago that it was not merely of some importance but of fundamental importance that in a Court of Law justice should not only be done, but should manifestly and undoubtedly be seen to be done; which we take to mean that public confidence in the administration of justice would be shaken if the least suspicion, however, illfounded, were allowed to arise that the course of legal proceedings could in any way be influenced by improper motives. We apply without hesitation an analogous rule to other branches of the public service. A civil servant is

not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests; but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognised throughout the whole of the service; if it were otherwise, its public credit would be diminished and its usefulness to the state impaired. Practical rules for the guidance of social conduct depend also as much upon the instinct and perception of the individual as upon cast iron formulae; and the surest guide will, we hope, always be found in the nice and jealous honour of civil servants themselves. The public expect from them a standard of integrity and conduct not only inflexible but fastidious, and has not been disappointed in the past. We are confident that we are expressing the view of the Service when we say that the public have a right to expect that standard, and that it is the duty of the service to see that the expectation is fulfilled".

We only wish to take this opportunity to emphasise that every civil servant must bear in mind at all times he owes a duty to the State and to Society to maintain himself in such a degree of rectitude and integrity which should always be above suspicion. If he falls from the high standards of morality he surely attracts disastrous results is the lesson every civil servant must necessarily apprise himself of. Who ever falls from those standards naturally must expect to be involved in a state of grief and to get out of such grief there is little or no use in making strong allegations of mala fides more often made out of frustration which thus deserve no or any consideration whatsoever.



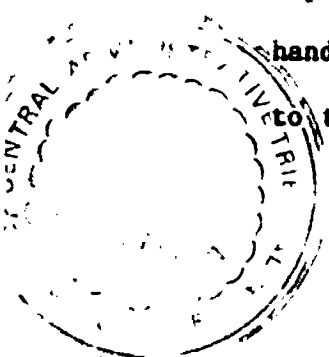
ever. This is our finding on point No.2. No other point arises for our consideration.

15. But, we are however troubled by the long pending investigation. Although we cannot say that the investigation has been lethargic or dragging its feet, it would have been better if faster and speedier steps were taken in concluding this investigation. We have been able to see from the records, case diary etc. though it appears to be somewhat complex and is certainly time consuming, it cannot go on for ever. In this connection we had asked the learned AG to tell us whether this officer cannot be reinstated in service and the investigation continued along side. He came back to us after consulting the Government and filed a memo dated 25-2-1994 stating that right now Government was unable to revoke the order of suspension but went on to record an assurance that if the investigation were to continue till the end of May, 1994 and was not concluded by then, Government would have little or no hesitation in revoking the order of suspension and reinstating the officer from 1st June, 1994. This offer was not acceptable to the officer. Thereupon the learned AG asked us to treat the Government as not being bound by that memo. That is how matters stood when we resumed the hearing of this application on 10-3-1994. We are not placing reliance on the said memo on record, treated the same as spent force. But, nonetheless, the learned AG with his usual fairness told us at the concluding stages of his arguments that notwithstanding the memo filed on behalf of the Government and treated as retracted he was not averse to ourselves making an order setting a dead line for the conclusion of the investigation so that if by that time nothing comes out Government would have

55

to take steps to revoke the order of suspension. He even mentioned the dead line for that purpose can be shorter than what was suggested in the memo. While we appreciate this stand taken by the learned AG, we think it proper to direct the LA police to conclude the investigation into the affairs of this officer on or before 30-4-1994 and in case the investigation remains inconclusive by that date, the Government will take steps to revoke the order of suspension and reinstate the officer forthwith. We make it clear in the event of the officer being reinstated in service on the terms indicated above, the LA police can still continue with the residual investigation till it is concluded. With this direction, we dismiss this application with no order as to costs. We direct the office to return all the records obtained from various sources to the respective source without any mishap. Let a copy of this order be sent to the respondents for information and necessary action. A copy of this order must ofcourse be furnished to the applicant as well.

16. We have not adverted to the submission of Shri Hegde who had promptly attacked Government of Karnataka in not placing an IPS officer, one Shri Kempaiah, under suspension at once when he was working as Deputy Commissioner of Police, Bangalore and is stated to have misbehaved very badly with the LA police who had occasion to raid his house on a similar charge as the one involved herein. Shri Hegde read out a few juicy press reports emanating in this behalf from the media. He actually handed over to us copies of those newspapers. We would like to tell Shri Hegde, if fortuitously that gentleman Shri Kempaiah



deserved something other than what actually he got, it is the Government's look out and we are not concerned. We are only surprised to hear that if whatever is stated about Shri Kempaiah is true, that the Government should have remained quiescent about the officer's alleged unseemly behaviour is really not something that would enhance the credit of a Government that believes in giving to the citizens spotless administration.

17. We have directed the Government to reinstate the applicant after April, 1994, if not earlier, in the event of the investigations into the affairs of this officer is not completed. We have also suggested that investigation can go on even after his reinstatement in service. We would like however to guard ourselves by stating that we should not be understood as having laid down herein that in all cases of suspension after a lapse of one year Government would be required to reinstate all those officers back into the saddle. In this case we find that suspension for a period of one year should have been ordinarily sufficient for the investigation to be completed and, therefore, we ordered reinstatement of the applicant after the end of April 1994. As a matter of fact, Government themselves had set a deadline in the matter of reinstating the officer by stating that if the investigation was not over by May, 1994 they would be more than willing to reinstate the applicant. All that we have done was to cut down that period by one month and advancing it by 30 days and nothing more. This is not any dicta flowing from this judgment and cannot be used by anybody else for urging that after one year's suspension an officer is entitled to reinstatement as of right. That would always depend on the facts and circumstances of the case, complexity of the investigation

(57)

etc. This aspect is fortified by the decision of the Supreme Court in U.P.Rajya Krishi Utpadan Mandi Parishad's case (supra) wherein it is stated that prolonged suspension is certainly a matter that calls for remedial measure and the remedy suggested is Courts should call for explanation from the authorities and if it is found unsatisfactory to direct them to complete the inquiry within a stipulated period as also to order increase in the payment of subsistence allowance adequately. In setting a dead line before which the investigation is to be completed and on the failure thereon if the officer is ordered to be reinstated, we have done nothing more than following the dicta of the Supreme Court.

sd-

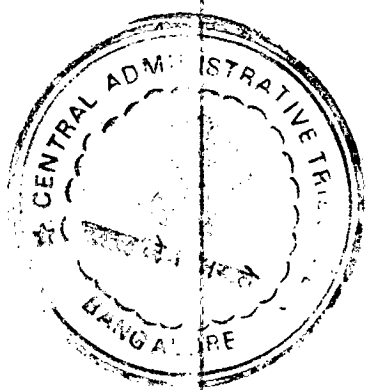
MEMBER(A)

sd-

VICE-CHAIRMAN.

bsv/np 060494

TRUE COPY



S. Sankar
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
12/4

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- **23 JUN 1994**

Review Application No.21 of 1994 in

APPLICATION NUMBER: 764 of 1993

APPLICANTS:

The Chief Secretary to
Govt. of Karnataka

RESPONDENTS:

v/s. Sri.S.M.Pattanaik, IAS,
Karnataka Cadre and Other.

1. Sri.B.V.Acharya for
Sri. D.R.Rajashekarappa,
Government Advocate,
Advocate General's Office, KAT Unit,
BDA Complex, Indiranagar, Bangalore-38.
2. The Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bangalore.
3. The Secretary,
Department of Personnel,
North Block, New Delhi.
- 4.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 10-06-1994.

S. Shanmugam
for DEPUTY REGISTRAR
JUDICIAL BRANCHES. 28/6

gm*

g/c
J. Jeyaraj
GM

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

RA. NO.21/94

FRIDAY THIS THE TENTH DAY OF JUNE 1994

Shri Justice P.K. Shyamsundar ... Vice Chairman

Shri T.V. Ramanan ... Member [A]

Government of Karnataka
by its Chief Secretary,
Vidhana Soudha,
Bangalore.

... Applicant

[By Advocate General Shri B.V. Acharya
for Shri D.R. Rajasekharappa,]

v.

1. Sri S.M. Pattanaik,
I.A.S., Karnataka Cadre,
S/o late Shri Laxmidhar Pattanaik,
R/o 1-D, HVS Paradise,
21, Andree Road,
Shanthinagar, Bangalore.

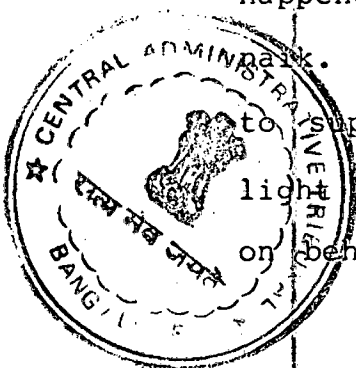
2. Government of India by its
Secretary to the Department of
Personnel, North Block,
New Delhi.

... Respondents

O R D E R

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. We have heard learned Advocate General who appears in support of this Review Application purporting to arise from our judgment in O.A. No.764/93 by which we dismissed the said application which in turn arose from an order placing the applicant in the said O.A.-No.764/93 under suspension. The applicant therein happened to be an IAS Officer by name Shri S.M. Pattanaik. However, in the course of our order referred to supra in penultimate facet we said that in the light of certain developments following a memo filed on behalf of the State Government stating that after



a certain time if the investigation into the affairs of the aforesaid IAS officer did not stand concluded, Government would themselves revoke the order of suspension and reinstate him in service. However, thereafter Government retracted because the officer concerned did not concur with that stand. But, however, we later gave a direction to the Government asking them to recall the order of suspension in case the investigation into the affairs of the officer did not stand terminated by the deadline stipulated in that order. We also gave permission to Government to continue the investigation even if the officer stood restored in terms of our order. We thought the position having been made clear and the order having spelt out two options to the Government viz., [i] investigation should be completed within a certain period; and [ii] if they are not able to complete the investigation Government to reinstate the officer and the investigation being continued even thereafter. When the matter stood in this state of affairs, the Government have now come up with an application which purports to be a Review petition seeking not a review of our order but wanting some kind of extension of time and why they want such extension is also not made clear ^{and} ~~and~~ we assume that it was for implementing our order. But after hearing the learned Advocate General it becomes clear that if what Government wanted was a simple extension of the deadline set by us for implementing our direction the seeking of a review was not the apposite format as that could have been ~~counte-~~ ^{achieved} ~~red~~ in by filing a simple application for extension

of time. What is more, there is nothing to be reviewed because Government having succeeded in the proceedings which had resulted in the O.A. filed on behalf of the IAS Officer having been dismissed outright, we fail to see why or how such an order can possibly have injured or spelt out something to the detriment of or prejudice to the Government. All that we had done was after dismissing the application we had set a deadline within which the suspension order which had been affirmed in the OA had to be revoked and the man reinstated. But we are herein not actually asked to meddle or interfere with the said direction. In the circumstance it seems to us that it is futile on the part of the Government to ask us to review our earlier order and, therefore, plainly this review application is not tenable and merits dismissal in time. It is accordingly ordered. No costs. Let a copy of this order be sent to Government.



bsv

MEMBER [A]

VICE-CHAIRMAN

TRUE COPY

R. Shankar
SECTION OFFICER 28/6
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL CLERK
BANGALORE

B. 7/8

RA 21/94

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

C.P.(CIV.) APPLICATION NO.30/1994
IN O.A. NO.764/1993

DATED THIS THE FOURTEENTH DAY OF JUNE, 1994.

Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. T.V. Ramanan, Member (A)

Shri S.M. pattanaik, IAS
S/o. Late Shri Laxmidhar patnaik
residing at 1-D, HVS paradise
21, Andree Road, Santhinagar,
Bangalore-560 027.

..... Applicant

(By Shri Rajeev Hegde, Advocate)

Vs.

Shri J.C. Lynn, IAS
Chief Secretary to
Government of Karnataka
Vidhana Soudha
Bangalore-560 001.

..... Respondent.

(By Shri D.R. Rajashekharappa, Advocate)

O R D E R

(Mr. Justice P.K. Shyamsundar,
Vice Chairman)

Heard both sides. This application seeks for action being taken against the Government of Karnataka for not complying with the directions of this Tribunal made while dismissing the original Application No.764/1993 disposed off on 16th/17th March, 1994. The applicant herein is Mr. pattanaik, who was also the applicant in the original application in which he complained that he had been unjustly kept under suspension by virtue of an order of suspension impugned therein. After elaborately hearing both sides, we dismissed the O.A. and



in the context affirmed the order of suspension. However, we did give a direction to the Government of Karnataka that in case the enquiry into the affairs of Shri pattanaik, that was under way having been undertaken by the Karnataka Government was not over by the 30th April, 1994, the State Government will reinstate the officer into service but at the same time be at liberty to carry on the investigation further. In terms of that order, the investigation having been not completed by the date referred to supra, thereafter instead of reinstating the applicant, the State Government came up with a review application seeking for some directions telling us that the investigation had reached a critical stage and therefore at such a crucial moment they should not have been asked to revoke the order of suspension leading thus to undoing the work done by the investigating agency. We disposed off that review application by an order made on 10.6.1994. All this was done in the present of the learned Advocate General who then took time till today to join us with the C.P. which is now on the anvil. Learned Advocate General today produced before us 2 copies of the Government Order no.DPAR 194 SAS 93 dated 31.3.1993 which reads as follows:

" ORDER NO:DPAR 616 SAS 93, Bangalore,
Dated 10.6.1994.

Whereas Shri S.M. pattanaik, IAS, (KTK 67) was placed under suspension under sub-rule 3 of A.I.S. (D&A) Rules, 1969, vide G.O. No. DPAR 194 SAS 93, dtd. 31.3.1993 pending investigation by the Karnataka Lokayukta in the case No.8/93 registered against him under section 13(1) (e) read with section 13(2) of P.C. Act 1988.

Whereas, Shri S.M. pattanaik, filed an application No.764/93 before the C.A.T. Bangalore, challenging the order of suspension.

Whereas the Hon'ble C.A.T., Bangalore, by its order dated 16/17-3-1994, dismissed the said application with directions to the Lokayukta Police to conclude the investigation on or before 30.4.1994 and in case the investigation remains inconclusive by that date directed the

Government to take steps to revoke the order of suspension and reinstate the officer in service forthwith.

Whereas, it may take some more time to the investigating agency to submit the final report.

Now, therefore, in compliance with the orders of the Hon'ble C.A.T., Bangalore, and in exercise of the powers conferred under rule 3(7)(c) of the AIS (D&A) Rules, 1969, the Government of Karnataka hereby revokes the order of suspension of Shri S.M. pattanaik, IAS, and reinstates him pending the investigation by the Karnataka Lokayukta.

BY ORDER AND IN THE NAME OF THE
GOVERNOR OF KARNATAKA

sd/-

(N. PRABHAKAR)

Under Secretary to Government, I/c.
DPA(R)(Services-I)

The above makes it clear that the investigation into the affairs of the officer being still incomplete, Government had taken action to continue the investigation but at the same time revoked the order of suspension that operated against the officer and had reinstated him pending continuance of further investigation.

2. However, Shri Rajiv Hegde, counsel for the applicant feels that this order is not in compliance of our direction at all and it is clear indication of Government's vindictiveness that had become more and more obvious. He points out that we had directed the Government to reinstate the officer. But inspite of that direction after taking 40 days over and above the time granted to the Government, they had come forward with an order reinstating the applicant but not giving a posting. This according to him is not compliance of our directions. We take a contrary view and take this opportunity to point out that in the course of the order, we had



not told Government to give him a posting and all that we had directed was to revoke his suspension and to reinstate him if ^{at} all investigation was not over by 30th of April, 1994. Under the circumstances, the Government order which is now on record complies fully with the directions but of course the Government had taken more time than what was allowed under the order. But ~~then~~ we do not take any serious notice of such remissness

now that our order has been complied with ^{and we} we should ~~be~~ dispend ^{on} to take any action for contempt. For the reasons mentioned above, this Contempt Application stands rejected. No order as to costs.



Sd/-
(T.V. RAMANAN)
MEMBER(A)

Sd/-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

mr.

Sd/-
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL DEPUTY
BANGALORE