

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00463/2016

DATED THIS THE 06TH DAY OF SEPTEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

Sri M.N. Vijayakumar,
Aged 61 years,
S/o the late Sri M.K. Neelakanta Rao,
7C, 14th B Cross, 1st 'A' Main,
Block V, MCHS Layout,
Sector – VI, HSR Layout,
Bangalore – 560 102Applicant

(By Advocate Shri N.G. Phadke)

Vs.

1. Union of India,

Represented by its Secretary,
Ministry of Personnel,
Public Grievance & Pensions (DOPT),
North Block,
New Delhi – 110 001.

2. Government of Karnataka,
Represented by its
Chief Secretary,
Vidhana Soudha,
Bangalore – 560 001

3. Union Public Service Commission
Represented by its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi – 110 069

4. Sri P.B. Mahishi (Retd. IAS Officer)
No. 177, 3rd Cross, 1st Block,
2nd Stage, RMV Extension,
Bengaluru – 560 094

5. Sri S.V. Ranganath (Retd. IAS Officer),
No. 25, 8th Cross,
2nd Block, Jayanagar,
Bengaluru – 560 011

6. Chief Vigilance Commissioner,
Central Vigilance Commission,
Satarkata Bhavan,
A-Block, GPO Complex, INA,
New Delhi – 110 023

7. Central Bureau of Investigation
Plot No. 5-B,
VI Floor, CGO Complex,
Lodhi Road,
New Delhi – 110 003
By its Director

....Respondents

(By Shri M.V. Rao, Counsel for Respondent No. 1, 6 & 7,
Shri T.S. Mahanthesh, Counsel for Respondent No.2)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

Heard. The matter relates to an inquiry which according to the applicant was truncated and in adverse position to the rules of natural justice, procedure and good process. He would say that out of the charges (1) (2) (3) (4) (5) (6) and (7) no witnesses were even cited except for charge No. 2. The learned counsel would say at this juncture that for charge No. 3 also two witnesses were cited but they were never examined. Respondent No. 4 was the witness for charge No. 2 and he is allegedly an interested person. For the other charges there are no witnesses and apparently no documents were marked through any witnesses. Hence it is submitted that the Inquiry Report is vitiated by non-application of mind and non-consideration of the elements in issue.

2. Coming back to Respondent No. 4 and his examination, it relates to a charge that while the applicant had been given an appointment by Respondent No. 4 in his cabin he and his wife had apparently tape recorded the entire conversation to the prejudice of Respondent No. 4 and somehow or other it came to the notice of the Hon'ble Lokayukta who had demanded to show cause for it from the Respondent No. 4.

3. But it is submitted that the Whistleblowers Act, which has come into fruition now, will provide ample opportunity to the applicant. The words 'Satyameva Jayate' will have no meaning if Whistleblowers are not allowed full play in the field. Even though it may cause some prejudice to the concerned officials, Rule 3 may not come into effect to protect them as coming out with

truth is more important than protection of prestige of the government employee. Therefore this charge does not appear to lie even in the first instance.

4. The applicant has a further case that he had produced tons of documents regarding corruption relating to about Rs. 40,000 crores in governance but the Inquiry Officer deliberately did not allow him to lead evidence by marking those documents and producing witnesses for the same. Therefore we queried the learned counsel for the respondents to answer this question. He would say that in the statement given by the applicant all these have been mentioned and this has been taken note of by the learned Inquiry Officer but then that is not the correct procedure. The Inquiry Officer ought to have questioned the applicant pari materia with Section 313 of CrPC or a similar law in force and given an opportunity for him to explain the charges in the light of his statement and then allow him to lead evidence in that regard. That having not been done the inquiry has now become vitiated and liable to be quashed. We hold that the charges would lie except the charge No. 2 which is opposed to normal prudence of the Whistleblowers Act. Therefore we quash that charge but the rest of the charges will remain in the field for the Government to consider whether they should go along with it and take appropriate action in relation to the charges No. (1) (3) (4) (5) (6) and (7).

5. Since the whole process of conviction and punishment goes, the applicant will be deemed as notionally reinstated on the date itself on which he was compulsorily retired from service but on the date on which he would have actually retired he would have deemed to be actually retired on normal

superannuation and benefits due to him will be modulated thereof and paid to him within the next one month.

6. Relating to the alleged scam of Rs. 40,000 crore, we will now leave it to the discretion of the Karnataka Government to take a decision. If they decide to re-examine the charges (1) (3) (4) (5) (6) and (7), it should be taken that this issue stands reopened by the Government and more evidence will have to be collected as the present charges are vague and needs material corroboration. In any case, the State Government will pass an appropriate order within one month.

7. The OA is allowed to this limited extent. No order as to costs.

(DINESH SHARMA)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00463/2016

Annexure A1 Copy of Paper presented at ASCI, Hyderabad 1993

Annexure A2 Copy of Applicant's letter dated 15.02.1997 to the Principal Secretary, RDPR.

Annexure A3 Copy of Applicant's letter to the Chief Secretary dated 24.11.1997.

Annexure A4 Copy of Public Affair Centre Guide 1999

Annexure A5 Copy of The translated Meeting Notice dated 02.04.1998 enclosing a Note.

Annexure A6 Copy of GOK Notification dated 23.11.2001 constituting the High Level Anti-Corruption Committee.

Annexure A7 Copy of UO Note by AKM Nayak dated 27.2.2002.

Annexure A8 Copy of Cabinet Secretary's letter to all Chief Secretaries dated 22.7.2004.

Annexure A9 Copy of Acknowledgment dated 15.06.2005 from Chief Secretary's office for the report given by the Applicant.

Annexure A10 Copy of Appreciation letter dated 21.06.2005 by the Karnataka Electricity Regulatory Commission.

Annexure A11 Copy of Chief Secretary's remarks of 'OUTSTANDING' in ACR - 21.06.2005

Annexure A12 Copy of Applicant's letter to Chief Secretary dated 04.07.2005.

Annexure A13 Copy of Applicant's letter dated 16.07.2005 to the Special Secretary (Power Reforms)

Annexure A14 Copy of Transfer Notification dated 16.07.2005

Annexure A15 Copy of Office order dated 20.07.2005 relieving 3 officials working under the Applicant.

Annexure A16 Copy of Office order dated 20.07.2005 relieving 4 officials working under the Applicant.

Annexure A17 Copy of Chief Secretary's remarks on Applicant's note dated 21.07.2005 along with neatly typed note & remarks

Annexure A18 Copy of Applicant's letter to the Chief Secretary dated 23.07.2005.

Annexure A19 Copy of Translated Govt. Notification dated 08.09.2005 creating Regional Commissioner's post

Annexure A20 Copy of Newspaper report dated 30.11.2005

Annexure A21 Copy of Govt letter dated 25.04.2006 giving permission to videograph DE proceedings.

Annexure A22 Copy of Applicant's letter to Chief Secretary dated 06.05.2006 regarding Bangalore Urban website.

Annexure A23 Copy of Applicant's Note dated 07.06.2006

Annexure A24 Copy of Applicant's circular dated 19.06.2006

Annexure A25 Copy of Applicant's Circular dated 29.06.2006

Annexure A26 Copy of Applicant's letter to Chief Secretary dated 14.08.2006.

Annexure A27 Copy of Applicant's letter dated 24.08.2006

Annexure A28 Copy of Neatly typed UO Note dated 24.08.2006 by AKM Nayak regarding appointment of CADA Administrators.

Annexure A29 Copy of Appreciation Letter from the Lokayukta dated 30.08.2006.

Annexure A30 Copy of Circular dated 30.08.2006 issued by the Applicant.

Annexure A31 Copy of Applicant's letter to the Chief Secretary dated 11.09.2006.

Annexure A32 Copy of Applicant's letter to the Chief Secretary dated 18.09.2006.

Annexure A33 Copy of Note sheet by Sri KM. Shivakumar, Personal Secretary regarding revival of Mysore Lamps is against public interest

Annexure A34 Copy of Press reports dated 23.09.2006 regarding the Applicant using RTI

Annexure A35 Copy of Applicant's letter to Chief Secretary dated 25.09.2006.

Annexure A36 Copy of Applicant's letter to Chairman, ARC dated 27.09.2006.

Annexure A37 Copy of Extracts from the Reports of Law Commission , ARC , Hota Committee , Civil Service Survey and Parliamentary Committee examining the Whistle-blowers Protection Act, a brief note of the recognition of the efforts of the Applicant and the Applicant's efforts reg. Whistleblowers Act - full bunch of reports.

Annexure A38 Copy of Applicant's email to Chief Secretary and others dated 07.10.2006.

Annexure A39 Copy of Applicant's letter to Chief Secretary dated 27.10.2006.

Annexure A40 Copy of Applicant's letter to Chief Secretary dated 22.11.2006.

Annexure A41 Copy of Applicant's letter to Chief Secretary dated 30.11.2006.

Annexure A42 Copy of Extract of the Note sheets including translated version of Kannada notings regarding giving posting to the Applicant.

Annexure A43 Copy of RTI Information received dated 31.01.2007.

Annexure A44 Copy of Applicant's letter to Chief Secretary dated 27.12.2006 reg. handing over of Sri AK. Monnappa's DE files.

Annexure A45 Copy of UO note of Revenue Dept dated 02.01.2007.

Annexure A46 Copy of Applicant's letter to Chief Secretary dated 16.01.2007.

Annexure A47 Copy of Applicant's letter to Chief Secretary dated 27.01.2007.

Annexure A48 Copy of Two Newspaper reports dated 02.02.2007,translated portions of PAC report about the IV-Respondent and DPAR letter dated 25.09.2009.

Annexure A49 Copy of CBI FIR against the IV-Respondent & Ors.

Annexure A50 Copy of Newspaper report about CBI FIR against the IV-Respondent dated 18.10.2007.

Annexure A51 Copy of RTI information dated 19.09.2007 – translated.

Annexure A52 Copy of Transfer Notification dated 02.02.2007

Annexure A53 Copy of Applicant's letter to Chief Secretary dated 06.02.2007.

Annexure A54 Copy of Newspaper report dated 19.02.2007

Annexure A55 Copy of Applicant's letter dated 23.02.2007 enclosing the Mahajar report - translated.

Annexure A56 Copy of Transfer Notification dated 22.02.2007

Annexure A57 Copy of Letter dated 24.02.2007 from Sri D.N.Nayak to the Chief Secretary.

Annexure A58 Copy of CTC of Sri D.N. Nayak assuming charge

Annexure A59 Copy of Applicant's letter to Chief Secretary dated 24.02.2007.

Annexure A60 Copy of Notesheetsreg. posting the Applicant to Mysore Lamps - translated

Annexure A61 Copy of Transfer Notification dated 24.02.2007

Annexure A62 Copy of Applicant's letter to C&I Dept dated 26.02.2007.

Annexure A63 Copy of Applicant's letter to H.E the Governor the C & I dated 26.02.2007.

Annexure A64 Copy of Home Secretary's letter to DG & IGP dated 02.03.2007.

Annexure A65 Copy of Applicant's letter to the Lokayukta dated 02.03.2007 enclosing extracts from Guest Book comments and a very recent newspaper clipping dated 02.01.2016 reporting a similar effort

Annexure A66 Copy of Applicant's wife's email dated 02.04.2007 to Home Secretary and others.

Annexure A67 Copy of RTI information dated 17.04.2007 about Mysore lamps.

Annexure A68 Copy of Applicant's letter to Chief Secretary dated 19.04.2007.

Annexure A69 Copy of Applicant's letter to C&I Dept dated 02.05.2007.

Annexure A70 Copy of KIC Order dated 05.05.2007

Annexure A71 Copy of Another KIC order dated 05.05.2007

Annexure A72 Copy of Newspaper report dated 06.05.2007 - Info Commissioner bats for IAS officer

Annexure A73 Copy of Newspaper report dated 09.05.2007 – Only 3 IAS officers declare assets.

Annexure A74 Copy of Applicant's letter to Chief Secretary dated 15.05.2007.

Annexure A75 Copy of LMS of Applicant's complaint against Sri I. Devendran.

Annexure A76 Copy of Newspaper report dated 16.05.2007 PM –tackle corruption head on.

Annexure A77 Copy of Newspaper report dated 23.05.2007 – Govt caught on wrong foot

Annexure A78 Copy of Applicant's police complaint dated 03.06.2007.

Annexure A79 Copy of Applicant's letter to Chief Secretary dated 07.06.2007.

Annexure A80 Copy of Applicant's email to WRD dated 01.07.2007.

Annexure A81 Copy of Applicant's email to WRD dated 04.07.2007.

Annexure A82 Copy of Newspaper report dated 05.07.2007 – New York Times.

Annexure A83 Copy of DPAR Notice letter dated 07.07.2007

Annexure A84 Copy of Newspaper report dated 08.07.2007 – The Indian Express.

Annexure A85 Copy of Applicant's letter to the Chief Secretary dated 10.07.2007.

Annexure A86 Copy of Applicant's email to WRD dated 28.07.2007.

Annexure A87 Copy of Applicant's email to WRD dated 02.08.2007.

Annexure A88 Copy of Applicant's email to WRD dated 04.08.2007.

Annexure A89 Copy of Applicant's email to WRD dated 06.08.2007.

Annexure A90 Copy of Applicant's letter to WRD dated 06.08.2007.

Annexure A91 Copy of Applicant's letter to WRD dated 09.08.2007.

Annexure A92 Copy of DPAR UO Note to WRD dated 20.08.2007 reg Applicant taking charge

Annexure A93 Copy of Translated Press Note by the Applicant dated 22.08.2007 - translated

Annexure A94 Copy of Press report dated 24.08.2007 – VijayakumarVows to Clean Augean Stables.

Annexure A95 Copy of Applicant's email to WRD dated 28.08.2007 & 30.08.2007.

Annexure A96 Copy of WRD letter dated 30.08.2007 to the Applicant - translated

Annexure A97 Copy of DPAR Notification dated 05.09.2007 placing Regional Commissioner, Belgaum as Administrator CADA.

Annexure A98 Copy of Notice to the Applicant dated 06.09.2007.

Annexure A99 Copy of Lokayukta's email dated 07.09.2007 to the Applicant.

Annexure A100 Copy of Applicant's reply dated 09.09.2007

Annexure A101 Copy of Applicant's wife's letter to DoPT dated 09.09.2007

Annexure A102 Copy of RTI information dated 10.09.2007 – no action on Applicant's reports.

Annexure A103 Copy of Applicant's letter to SP, Belgaum dated 11.09.2007.

Annexure A104 Copy of Newspaper report dated 12.09.2007 – CADA bid to clean Augean Stables.

Annexure A105 Copy of Applicant's letter dated 13.09.2007 to the Chief Secretary

Annexure A106 Copy of Applicant's letter to WRD dated 14.09.2007

Annexure A107 Copy of A Special report dated 20.09.2007 by the IV- Respondent in the Applicant's ACR.

Annexure A108 Copy of WRD Note sheet dated 11.08.2007 reg. DPAR not consulting WRD before posting officers – translated.

Annexure A109 Copy of SP Belgaum's letter to the Applicant dated 02.10.2007.

Annexure A110 Copy of RTI Information dated 15.10.2007

Annexure A111 Copy of Applicant's letter to SP, Belgaum dated 04.11.2007.

Annexure A112 Copy of Applicant's letter to Chief Secretary dated 06.11.2007.

Annexure A113 Copy of Impugned notice dated 10.12.2007 U/R. 8 of All India Services (Discipline & Appeal) Rules, 1969.

Annexure A114 Copy of Press Report dated 09.02.2016 - Will anybody invest in a corrupt State: Judge

Annexure A115 Copy of Letter from Deputy Administrator, CADA, Belgaum dated 15.12.2007 to KNNN.

Annexure A116 Copy of Applicant's reply dated 25.12.2007 to impugned notice dated 10.12.2007

Annexure A117 Copy of Letter from Deputy Administrator, CADA, Belgaum dated 28.12.2007 to SP, Belgaum.

Annexure A118 Copy of Governor's office letter dated 03.01.2008 to the Chief Secretary

Annexure A119 Copy of RTI Information dated 28.01.2008

Annexure A120 Copy of DPAR letter dated 31.01.2008 to the Applicant

Annexure A121 Copy of Press Report dated 01.02.2008 - Lokayukta to probe CADA works

Annexure A122 Copy of Governor's office letter dated 08.04.2008 to the Applicant's wife

Annexure A123 Copy of President's office letter dated 11.04.2008 to the Applicant's wife

Annexure A124 Copy of Press Report dated 15.04.2008 - IAS officer's wife told to be quiet

Annexure A125 Copy of Applicant's wife's email dated 17.04.2008 to the Governor's office

Annexure A126 Copy of Chief Secretary's letter dated 19.04.2008 to the Applicant

Annexure A127 Copy of DSP, Belgaum's letter dated 25.04.2008 to SP, Belgaum with a copy to the Applicant.

Annexure A128 Copy of Applicant's letter dated 30.04.2008 to the Chief Secretary.

Annexure A129 Copy of Applicant's letter dated 23.09.2008 to the Chief Secretary.

Annexure A130 Copy of Applicant's letter dated 27.09.2008 to the Prime Minister's office.

Annexure A131 Copy of Home page of the website created for KAT by the Applicant.

Annexure A132 Copy of Accountant General's letter dated 23.12.2008 to the Applicant

Annexure A133 Copy of Chief Secretary's letter dated 17.03.2009 to the Applicant

Annexure A134 Copy of RTI information dated 18.03.2009

Annexure A135 Copy of RTI information dated 22.11.2010

Annexure A136 Copy of Applicant's letter dated 24.06.2009 to the Editor, Prajavani

Annexure A137 Copy of DPAR-AR letter dated 20.09.2009 to the Applicant

Annexure A138 Copy of Applicant's letter dated 22.07.2009 to the Chief Secretary.

Annexure A139 Copy of Applicant's letter dated 10.08.2009 to the Chief Secretary

Annexure A140 Copy of Applicant's letter dated 03.10.2009 to the Chief Secretary

Annexure A141 Copy of Applicant's wife's letter dated 14.10.2009 to the Chief Secretary

Annexure A142 Copy of Applicant's letter dated 27.01.2010 to the Chief Secretary

Annexure A143 Copy of RTI information dated 29.09.2010

Annexure A144 Copy of KIC order dated 28.10.2010

Annexure A145 Copy of RTI information dated 29.10.2010

Annexure A146 Copy of Letter dated 31.03.2010 by the Chief Secretary to the Applicant

Annexure A147 Copy of Applicant's letter dated 21.04.2010 to the Chief Secretary and Cabinet Secretary's letter dated 03.03.2010

Annexure A148 Copy of RTI information dated 07.05.2010

Annexure A149 Copy of Applicant's letter dated 28.05.2010 to the Cabinet Secretary through the Chief Secretary.

Annexure A150 Copy of RTI information dated 26.06.2010

Annexure A151 Copy of Translated Note sheet dated 16.12.2010.

Annexure A152 Copy of Applicant's Representation dated 27.06.2011 to the Disciplinary Authority to change the IA (without Annexures).

Annexure A153 Copy of Applicant's letter dated 26.10.2013 to the Chief Secretary and supporting documents bunched together.

Annexure A154 Copy of Applicant's written arguments dated 27.07.2011

Annexure A155 Copy of The truncated report of the Inquiry Authority dated 22.09.2011

Annexure A156 Copy of Applicant's Representation dated 31.10.2011 to the Disciplinary Authority to provide complete report

Annexure A157 Copy of Applicant's Representation dated 06.03.2012 to the Disciplinary Authority to provide complete report

Annexure A158 Copy of Applicant's letter dated 25.02.2012 to all IAS officers of Karnataka Cadre

Annexure A159 Copy of KIC Order dated 02.05.2013

Annexure A160 Copy of UPSC Advice dated 11.03.2015

Annexure A161 Copy of Letter dated 12.03.2015 of the II-Respondent.

Annexure A162 Copy of Applicant's report dated 01.04.2015 on the UPSC Advice.

Annexure A163 Copy of Impugned penalty Order dated 27.04.2015.

Annexure A164 Copy of Applicant's petition dated 12.05.2015 against the penalty order dated 27.04.2015.

Annexure A165 Copy of Applicant's letter dated 27.06.2015 to the Cabinet Secretary with copies to others

Annexure A166 Copy of Applicant's letter dated 24.01.2016 to the Cabinet Secretary with copies to others.

Annexure A167 Copy of Newspaper reports dated 12.01.2016 and 08.03.2016.

Annexure A168 Copy of Newspaper report dated 30.03.2016

Annexure A169 Copy of Letters dated 15.02.2010, 26.06.2010, 29.06.2010, 22.09.2010, 29.09.2010, 18.10.2010, 19.11.2010 (2 Nos.), 24.01.2011, 16.11.2011, 13.11.2013 & E-newspaper extract dated 22.06.2011.

Annexures with reply statement

Nil

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