

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01891/2018

DATED THIS THE 31ST DAY OF JANUARY, 2019

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

HON'BLE SHRI C V SANKAR, MEMBER (A)

Dr. Rajvir Pratap Sharma, IPS
Addl. Director General of Police &
Managing Director,
Karnataka State Handicrafts
Development Corporation,
M.G. Road, BengaluruApplicant

(By Advocate Shri V. Abhilash Raju)

Vs.

Deputy Secretary to the Government
DPAR (Services)
Government of Karnataka
Vidhana Soudha
Bangalore- 560 001Respondent

(By Shri R.B. Sathyanarayana Singh, Counsel for the Respondent)

ORDER

DR. K.B. SURESH, MEMBER (J):

Heard. Sometimes it so happens in governance that some people in charge may sometimes be more rigid than usual and thus create

personal hostility against themselves. We had in an earlier opportunity had occasion to watch the applicant in action in the matter relating to BMTF. We had noted with approval the stellar work done by the applicant in that and had hoped that if several others with such commitment were present the degree of illegality in the real estate sector in Bangalore city would have come down notably. We do not know whether this judgment of ours had been set aside in other proceedings. Apparently this order was not challenged, therefore, we assume, for the time being, that our appreciation of the earnest efforts made by the applicant in upholding his duties and commitment even now stands unstained and unchallenged. A similar matter had entertained our attention earlier in O.A. No. 170/00360/2015 which is produced herewith as Annexure-A1 dated 24.01.2017. We quote from it:

“ORDER

Hon'ble SMT. B. BHAMATHI MEMBER (A)

This OA has been filed under Section 19 of Administrative Tribunals, Act, 1985. The relief clause is as follows:

- (i) *to set aside the Respondent No.1's Order/Letter, dated 12.11.2013 (not acted on till date), asking the applicant to show cause on matters which were raised and closed by the Respondent No.1 over 3 years ago and its culmination in the file Notings, dated 13-14.11.2013.*
- (ii) *to set aside the Show Cause Notice, dated 16.02.2015 bearing No.DPAR 01 SPS 95 (Part-4)*
- (iii) *to the Respondent No.1 & 2 to consider the candidature of the applicant objectively and to recommend the name of the applicant suitably for the President's Medal for Distinguished Services (PPM) for the Independence Day, 2015;*
- (iv) *grant the costs of this application;*

(v) to set aside the Notice and Article of Charges, dated 25.5.2015
(Annexure A42);

(vi) grant any such order of further orders may be deemed fit and proper in the facts and circumstances of the case;

2. In brief, the applicant has alleged illegal and malafide actions of respondents by denying him from being awarded the President's Medal for his distinguished/meritorious service, on one ground or another, from 2013 Independence Day onwards. He submits that he was a recipient of the first President's Medal in his career as IPS officer in the year 2007. He contends that he continued to have a blemishless record from 2007 till 5.11.2013 and was not fading any disciplinary proceeding. No proceedings are also being contemplated against the applicant. There was vigilance clearance also.

3. The applicant has submitted that as the deadline of Independence Day medal of 2013 was missed, respondents were to consider him for the Republic Day award of January, 2014 as per their own file notings (Annexure A-11) Accordingly, applicant's case along with ten other IPS officers, stating to have no departmental inquiry, criminal cases or judicial inquiry pending against the applicant and other ten officers, were considered in November, 2013. Only the Confidential reports of the concerned officers which are maintained in the office of the Chief Secretary (Respondent-1) i.e., Department of Personnel and Reforms (DPAR) remained to be also considered. Hence, office of Respondent-2 i.e., the Home Department addressed an internal office note to the DPAR dated 5.11.2013 proposing applicant's name at item No.1, in the total list of eleven officers, for consideration for conferment of President Police Medal for distinguished service/police medal for meritorious service on the occasion of Republic Day, 2014. This got published in the newspapers.

4. On 6.11.2013 based on newspaper reports, one Shri.Pradeep Singh Kharola, IAS and former Principal Secretary to the Chief Minister, addressed a letter marked secret to the Chief Secretary (Respondent-1) alleging that the Hon'ble High Court of Karnataka has held him guilty of abuse of power and process of law in his capacity as ADG, BMTF. It was also alleged that the applicant had snatched a cheque seized by the CBI which he tore off when the CBI earlier conducted a raid in the house, where he was living. The next allegation was that the applicant filed a false affidavit before Bangalore Development Authority (BDA). The

above allegations were levelled to demonstrate that the applicant did not have an unblemished record. The Chief Secretary (R-1) directed on 11.11.2013 the Additional Chief Secretary (ACS) to go through and take considered action. These allegations were already being examined in the DPAR from before and they were fully aware of the same.

5. It is, *inter-alia*, in the above background relying upon the judgment of Hon'ble High Court of Karnataka in Criminal Petition No.898/2012 dated 10.10.2012 and Criminal Petition No.1627/2015 dated 29.3.2010 containing judicial findings against the applicant that the first impugned notice dated 12.11.2013 was issued by DPAR. The said impugned notice directed the applicant to explain as to why the said judicial findings should not be incorporated in the service record and why disciplinary proceedings should not be initiated against the applicant based on the above judicial findings. The applicant did not respond to the said notice, since the word "statement of defence" had been used in the said impugned notice. Hence a clarificatory reply was issued on 18.12.2013 to the applicant reiterating the contents of the letter dated 12.11.2013 and stating therein that only in general terms a reply was sought for by way of applicant's explanation/comments in the matter. It was not a notice under AIS (D&A) Rules. The applicant appealed against the said notice of 12.11.2013.

6. In connection with the said impugned notice of 12.11.2013, it is on record that the applicant filed an SLP before the Hon'ble Supreme Court against the judgment of High Court of Karnataka in Criminal Petition No.1627/2005 dated 29.3.2010 wherein the Hon'ble High Court held the petitioner guilty for having abused the process of law and dismissed the Criminal Petition with costs. The Hon'ble Supreme Court Dismissed the SLP but deleted the portion regarding the payment of costs. The other Criminal Petition No.898/2012 dated 10.10.2012 in which applicant was respondent was allowed by the Hon'ble High Court of Karnataka. The SLP filed by applicant was dismissed as not pressed.

7. In the meantime, applicant, who had approached CAT, Bangalore Bench, obtained an order of this Tribunal in OA No.1546/2013 dated 2.1.2014 directing the Ministry of Home Affairs to consider the applicant's prayer for award of Police medal for the Republic day, 2014 in accordance with law, preferably before 25.1.2014. since no decision can be directly taken by the Ministry of Home affairs for conferment of such awards without the recommendation of the State Government and since the impugned notice of 12.11.2013 issued to the applicant on 12.11.2013 was also pending disposal with R-1, it appears that no final

recommendation reached the Ministry of Home Affairs for conferment of this award for the year 2014. In this way, the deadline of Republic Day award of January, 2014 got missed.

8. The applicant's contention is that the matter had not attained finality in respect of the judgment of Hon'ble High Court of Karnataka regarding the judicial finding that the applicant had abused the process of law, even as the cost were set aside. He contends that the judgment was *ex facie per in-curium* and hence the said judgment is not binding on the applicant or any court of law, including this Tribunal.

9. The respondents have appeared on notice and resisted, denied and disputed the allegations in the OA and justified the issue of the impugned show cause notices for their being declared as valid and sustainable under law. The respondents have also relied upon the judicial findings of the Hon'ble High Court and the Hon'ble Supreme Court of India in the SLP's for issue of the said notices. In particular, the orders of Hon'ble Supreme Court has been treated to have attained finality in respect of the allegations against the applicant that he had abused the process of law. Accordingly, the respondents have taken a view that they have rightly not recommended the applicant's case earlier, which if they had done, would have placed them in an embarrassing situation, since the orders of the Court had attained finality prior to November 2013, when he was considered and proposed. Further, it is contended that, it is the prerogative of State Government to recommend or not or recommend officers after consideration of relevant materials on record for conferment of Award. Hence the respondents were within their right not to propose the applicant's name for award of police medal for Independence Day, 2014, if they found him not fit to receive the medal.

10. In the above background, we are to examine the prayer for quashing and setting aside the impugned notices of 12.11.2013, 16.02.2015 and 25.05.2015.

11. We have perused the records and given our anxious consideration to the prayers of the applicant and rival contentions in support of and against the prayer of the applicant by the learned counsel for the applicant and the respondents, respectively.

12. It is evident from records, that the DPAR was fully aware of the allegations against the applicant from before and matter was under examination in that Department. It was the Department of Home which proposed the applicant's name for conferment of award to DPAR on 05.11.2013. It was then that Shri Kharola, in his personal capacity, sent the secret letter on 06.11.2013 to R-1 based on the newspaper report earlier referred. But this letter was

only a repetition of similar such allegations filed by certain other IAS officers, who had also allegedly been subjected to applicant's exercise of excessive/malafide authority/power by applicant as ADG (BMTF) and which complaints were being examined in DPAR, when the issue of Shri Kharola was one of such letters on the records of DPAR, when the issue of proposal for considering applicant's name for Independence Day award of 2014 was received in DPAR at a time when the DPAR, was already examining similar allegations against the applicant.

13. *It is in this background that the impugned notice dated 12.11.2013 pertaining to the judicial findings by the Hon'ble High Court of Karnataka holding applicant guilty of abuse of process of law was issued. The SLP was already dismissed on 26.07.2010 itself.*

14. *Hence, the prayer for quashing and setting aside the show cause notice dated 12.11.2013 has to be examined in the above background. It is evident that the notice was issued to give a reasonable opportunity to the applicant to give his preliminary explanation. The Tribunal is not bound to interfere with the decision to issue the said preliminary notice issued pursuant to compliance of principles of natural justice. No prejudice can be deemed to have caused to the applicant by issue of the said notice. Hence no interference is called for when notices are issued following the principles of natural justice.*

15. *It is the applicant's perception that it is a show cause notice whereas it is clarified in the letter dated 18.12.2013 that the impugned notice on 12.11.2013 is only to obtain the preliminary stand of the applicant with reference to the allegations judicial findings in criminal petitions No. 898/2012 and 1627/2005.*

16. *Similarly, the impugned notice dated 16.02.2015 was interpreted as show cause notice by the applicant, whereas it was issued to obtain preliminary stand of the applicant on the contents of the notice under AIS (Conduct) Rules. This notice was issued under Rule 10 (3) and (4) of AIS (Conduct) Rules, seeking his explanation, inter alia, for violation of Rule 10 (9) of the said Rules for having given false affidavit. We are not liable to interfere with issue of the second impugned notice of 16.02.2015 also. Applicant was bound to reply and give his point of view to aid the respondents to take an objective view after giving him due opportunity. No adverse view was taken before issuing the notice. By a proper reply, applicant had the opportunity to avert any adverse view likely to be taken by respondents.*

17. *As regards the third show cause notice containing Article of Charges dated 25.5.2015 it is settled law that, except in rare*

cases, normally it is not within the scope of interference by the Courts and Tribunals to quash and set aside the charge sheet or show cause notice issued within the purview of Departmental Inquiry. We rely on the ratio laid down by the Hon'ble Supreme Court in the case of Union of India and Another Vs. Kunisetty Satyanarayana – (2007) 2 SCC (L&S) 304 which was as follows:

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

18. Hence we are of the considered view that there is no scope to interfere with the issue of any of the impugned notices. The applicant is bound to submit his reply to the administration/disciplinary authority, as applicable, who shall consider the same and decide in accordance with law.

19. As regards the prayer in Clause 8(iii) of the relief clause, it is evident that no useful purpose will be served in adjudicating the said relief as the prayer has become out dated since the President's Medal for distinguished service for the Independence Day, 2014 has already been conferred for that event/year of 2015. The event itself cannot be revisited rendering it beyond the scope of judicial review. This is not disputed by the learned counsel for applicant.

20. This Tribunal is not liable to dispute the contention of the respondents that it is prerogative of the State Government to propose/recommend or not to propose/recommend conferment of the said award after considering all the relevant material on record and to see if the norms prescribed under the scheme are fulfilled or not. It is also for the respondents to take a view as appropriate as to whether applicant fulfils the criteria laid down to decide if he qualifies or merits conferment of award.

21. *The last date for completing the selection process for every Republic day Award ceremony is December 31st and the last date for completion of selection process for Independence Day is one month before the Independence Day of that year.*

22. *The learned counsel for applicant is satisfied if his case is considered in the next/immediate forthcoming event/year for conferment of Award. Hence, the ends of justice would be met if we convey our view, that notwithstanding the fact that relief clause 8 (i)(ii) and (iv) are liable to be dismissed and no useful purpose can now be served in adjudicating relief clause 8 (iii), the respondents are not pre-empted from considering any representation of the applicant for being considered for the next immediate forthcoming award event/year. The right to be considered itself cannot be denied by the Tribunal, although the prayer to be considered later than 2015 Independence Day is beyond the scope of the relief prayed for.*

23. *In view of the foregoing, in the interest of justice, applicant's if he so wishes, may submit his representation for conferment of award for the next, immediate forthcoming event/year. The respondents may consider and dispose of the same in accordance with law.*

24. *We restate that we have no grounds, legal or otherwise to interfere with relief prayed for at clause 8(i), (ii) and (iv) of the OA. Hence, the prayer therein are dismissed.*

25. *Accordingly, OA is disposed of to the extent of above observations. No order as to costs.”*

2. Apparently, by the time we could hear the matter, somehow or other the recommendations were complete and we had to let go of the matter with a pious hope that at least in the next opportunity some justice would be given to the applicant.

3. But it appears that the matter was taken up in challenge in Writ Petition No. 5844/2017 which was disposed off by the Hon'ble High Court vide order dated 05.10.2018 which we quote:

“ORDER”

The petitioner is before this Court in this petition assailing the

order dated 24.01.2017 passed by the Central Administrative Tribunal ('CAT' for short) in O.A. No. 360/2015. The petitioner is further seeking that the notice dated 12.11.2013, Show cause notice dated 16.12.2015 and the Articles of Charge dated 25.05.2015 be set aside. The consequential relief of recommending the name of the petitioner for the President's Medal is also sought.

2. The petitioner is a Senior IPS Officer of the Karnataka Cadre. He was one among the officers who had been short-listed for the purpose of recommending his name for Award of Distinguished Service/Police Medal for meritorious service on the occasion of Republic Day-2014. Such recommendation was to be processed subject to verification of the Confidential Reports pertaining to the officers who were so short-listed. At that stage the petitioner was issued a notice dated 12.11.2013 intimating him about the proposal to incorporate certain observations in his confidential reports about abuse of process of law by the petitioner, as observed by this Court in two criminal petitions. Subsequently a show cause notice dated 16.02.2015 was also issued to the petitioner alleging that he had filed a false affidavit for securing allotment of a site from the BDA. The petitioner alleging that the said action by the respondents is malafide to deny him the honour of being conferred with the President's Medal was before the CAT assailing the action proposed. The CAT through the order dated 24.01.2017 did not interfere with the action proposed by issue of notice, but with regard to the Award of President's Medal, certain observations were made and the application was disposed of. The petitioner therefore claiming to be aggrieved is before this Court.

3. The respondents have filed their objection statement seeking to justify their action and to sustain the order of the CAT.

4. In that background we have heard Sri. D.L.N.Rao, learned Senior Counsel along with Sri. Anirudh Anand, learned counsel for the petitioner and Sri. I. Taranath Poojary, learned Government Advocate for the respondent. We have accordingly perused the petition papers.

5. The challenge of the petitioner is to the notice seeking to incorporate adverse remarks in the service records, show cause notice alleging the filing of false affidavit and the Articles of charge issued in that regard. The CAT has therefore arrived at the conclusion that it is premature to interfere as the petitioner can put forth the defence in the proposed enquiry. On this aspect the CAT has referred to the decision of the Hon'ble Supreme Court in the case of Union of India and another -vs- Kunisetty

Sathyanarayana[(2007) 2 SCC (L&S) 304].

6. The learned senior counsel for the petitioner on the other hand has referred to the decision in the case of The State of M.P. -vs- Bani Singh and another (AIR 1990 SC 1308) wherein it is held as hereunder;

"4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

7. On the legal aspect with regard to interference in such matters, the position is crystal clear that in an ordinary circumstance, the Courts are required to be loath to interfere in disciplinary matters at the stage of issue of show-cause notice or Articles of charge. Therefore, ordinarily there will be no interference. But in circumstances where grounds urged are with regard to the manner in which the proceedings are initiated belatedly and that too if it indicates malafide on the face of it, the Courts will have to certainly consider as to whether in the facts and circumstances obtaining in a particular case, the employee/officer concerned should be made to undergo the arduous process of facing the enquiry only for the sake of the completion of the process, merely because he would have an opportunity to defend himself and come clean despite the records on the face of it indicating that such process is not desirable. When there are complicated issues which may require recording of evidence in the process of enquiry to ultimately arrive at a conclusion, no doubt the

only option should be to allow the employee to go through the process. However if in a particular case the material on record itself discloses that the enquiry proposed will be a futile exercise and the mere pendency of the enquiry will affect the prospects of the employee in such service, the Court is required to exercise its discretion to take note of the situation and redress the grievance.

8. In the above background, the process initiated against the petitioner will have to be noticed so as to arrive at an appropriate conclusion in the present facts. The petitioner herein had filed a Criminal Petition No.1627/2005, making certain allegations against certain other officers in relation to the action taken by them in other writ petition to his detriment because of which he had the grievance. A learned Judge of this Court through the order dated 29.03.2010 dismissed the petition filed by the petitioner herein and observed that it was an abuse of process of law and while dismissing the petition, cost was imposed. The cost was subsequently waived by the Hon'ble Supreme Court. Further, in respect of the action initiated by the petitioner herein, another officer filed the Criminal Petition No.898/2012 which was allowed by another learned Judge by the order dated 10.10.2012 and it was observed that action of the petitioner herein was an abuse of process of law. The matter had stood at that and the file had been closed.

9. Apart from the fact that the different officers were involved in the inter se litigation making certain allegations against each other and in that process the observation was made by this Court about the abuse of process of law, the manner in which it was presently brought to the fore in the situation as it has been done is also to be noticed so as to arrive at an appropriate decision. From the date of the orders passed in the said criminal petitions, the same had remained dormant and no action was proposed against the petitioner. When this was the situation the Un-official Note dated 06.11.2013 (Annexure-J) was issued recommending the names of the officers for the Republic Day-2014 honour. One of the considerations for inclusion of the names in the list was also that there was no Departmental Enquiry, Criminal case or Judicial Enquiry pending as on that day against the officers recommended, which included the petitioner. It is in that backdrop the Secret note (Annexure-K) is issued on 06.11.2013, pursuant to which the impugned notice dated 12.11.2013 (Annexure-O) is issued to the petitioner proposing to include the said observation relating to abuse of process of law in the service records despite there being no direction to that effect by the Court. Hence the said action will

have to be reckoned as an action which has been initiated only in that background and there was no legal compulsion in that regard.

10. The next action proposed is the show cause notice dated 16.02.2015 (Annexure-P) alleging the filing of a false affidavit by the petitioner for procuring the site from the BDA. A consideration of this aspect was made by the respondents as far back in the year 2008 as per the note sheet at Annexure-R. Pursuant thereto the letter dated 21.05.2009 (Annexure-S) is addressed wherein the respondents have taken note of these aspects and allowed the matter to rest as far back as in the year 2009 but the same has been revived at present, which on the face of it will indicate lack of bonafide in the proposed action.

11. That apart, the petitioner has also filed additional documents before this Court. From the same the learned senior counsel would refer to the representation dated 16.06.2017 (Annexure-JJ) submitted by the petitioner since the appointment of the enquiry officer was made. A consideration of the same has been made by the Law Department as per the note dated 08.11.2017 (Annexure- KK) and the flaw in continuing the enquiry against the petitioner was pointed out in the said note. It is therefore contended by the learned senior counsel that the entire enquiry proceedings as initiated is without basis in respect of stale charges which had already been considered and closed by the respondents themselves and it has been reopened despite the Business Rules not permitting the same.

12. In the above backdrop if the legal position as noted is kept in view and if the factual aspect is taken note of, it is seen that all concluded issues relating to the petitioner is being attempted to be reopened and kept alive. The triggering point appears to be the recommendation dated 06.11.2013 (Annexure -J) for conferring the President's medal. The performance appraisal of the petitioner for the period from 01.04.2012 to 31.03.2013 (Annexure-D) not only, does not indicate any adverse comment or remark but he has been graded at 9.5 out of 10 in the scale of 1-10. The issues sought to be enquired against are issues of the period prior to the said assessment and the recommendation also stated that there are no proceedings pending. In that view, in the facts and circumstances of the present case there would be no justification to permit such an enquiry only because it was at the stage of Articles of charge.

13. Insofar as the relief sought by the petitioner to direct the respondents to recommend the name of the petitioner for the Republic Day Award, the same does not arise for consideration at this stage as rightly observed by the CAT. On the closure of the

present proceedings, it is a matter to be taken note by the respondents if there is no other legal impediment in that regard. On that aspect we therefore do not see the need to make any specific order.

14. Hence, for all the afore stated reasons the following order:

- (i) *The order dated 24.01.2017 in O.A. No.360/2015 is set aside to the extent stated above.*
- (ii) *Consequently the Show cause notices dated 12.11.2013 (Annexure-O); 16.02.2015 (Annexure-P); the Articles of charge dated 25.05.2015 (Annexure-Q) and all further proceedings thereto are set-aside.*
- (iii) *The writ petition is accordingly disposed of with no order as to costs.”*

4. In paragraph 13 of the said order the Hon'ble High Court held that **“Insofar as the relief sought by the petitioner to direct the respondents to recommend the name of the petitioner for the Republic Day Award, the same does not arise for consideration at this stage as rightly observed by the CAT. On the closure of the present proceedings, it is a matter to be taken note by the respondents if there is no other legal impediment in that regard. On that aspect we therefore do not see the need to make any specific order.”** Thereupon the Hon'ble High Court proceeded to quash the show cause notices and the articles of charge and all further proceedings.

5. It appears that thereafter applicant had issued Annexure-A3 which is a letter to the Director General and Inspector General of Police Smt. Neelamani N. Raju. We quote from it:

*“No. 39, 2nd Floor, United Mansion,
Mahatma Gandhi Road,*

*Bangalore – 560 001, INDIA
Telegrams : HANDICRAFTS
Ph: 25582656/71204445/71204446/25582793
Fax: 91-080-25580402
Post Bag No. 5307
E-mail: md@cauveryhandicrafts.net
Website: <http://www.cauverycrafts.com>
CIN : U75112KA1964SGC001526*

Karnataka State Handicrafts Dev. Corp. Ltd.
(A Govt. of Karnataka Undertaking)

***DR.RAJVIR PRATAP SHARMA, IPS,
ADGP & MANAGING DIRECTOR***

No. KSHDCL/MD/PAR/75/2018-19

16.10.2018

Dear Madam,

*Sub: Recommendation for Award of President's Medal for
distinguished service on the occasion of Republic Day
2019-forwarding of recommendation roll as per the
guidelines-reg.*

*I wish to inform that I was fully eligible for the award for the
Republic Day 2014 and on the extraneous reasons my
recommendation was withheld.*

*The Hon'ble High Court in the Writ Petition No.5844/2017
(S-CAT) has set aside all the acts which were not bonafide at all
and has observed that my name should be recommended for the
award of the Medal if there is no other legal impediment. In this
regard I wish to inform that my Performance Appraisal Reports
have been outstanding and I am not facing any disciplinary
proceeding.*

*The act of depriving me the medal for five years has been
dealt appropriately by the Hon'ble High Court in the Writ Petition
No.5844/2017 (S-CAT). In view of the above, as a Head of the
Police Force to represent appropriately. In case, if any malafide
intent is continued akin to earlier years, the Committee will give me
the due opportunity to represent my case in accordance of the
principles of natural justice.*

*I am making the above request in the circumstances
explained above.*

With regards,

*Yours,
Sd/-*

*Smt. Neelamani N.Raju, IPS,
Director General and
Inspector General of Police,
(Head of Police Force),
Government of Karnataka,
State Police Headquarters,
Bangalore.”*

6. It appears that on 08.03.2018 as President of IPS (Karnataka Association), Bengaluru, applicant had issued Annexure-A7 letter which we quote:

“IPS (Karnataka) Association, Bengaluru

No.

**DR.RAJVIR PRATAP SHARMA, IPS,
ADGP & PRESIDENT**
2018

Date:8-3-

Dear,

Sub: Recent happenings depicting Police and Indian Police Service in poor light.

I want to draw your kind attention towards recent incident of attack on Hon'ble Lokayukta in his office and pattern behind such incidents. The above incident cannot be taken in isolation and it is very apparent that there is something missing in the entire functioning of the Police Force and as a Managerial service to the Police Force in Karnataka, the Indian Police Service cannot remain disassociated with such happenings. I am sure, if stronger and professional mechanism had existed, such happenings could have been avoided. I am bringing certain other incidents to demonstrate that such incidents have a definite pattern and I enumerate few so as to appreciate dimension of the growing problem.

- 1. One lady IAS officer Ms.Rashmi was assaulted in Mysore by hooligans in her office area.*
- 2. The Deputy Commissioner of Mysore, Ms.Shika underwent a serious attack on her personal liberty and ironically she had to wait hours together to register First Information Report.*
- 3. Recent attack by a group of hooligans in the UB City on one innocent victim and subsequent lethargy to take up appropriate action on the part of the police*
- 4. Attempt of Setting fire of a Government building by one*

politician

There are many other incidents like Cauvery rioting in Bangalore city, farmers going berserk in city and the murders in the recent past in broad daylight.

This all indicates serious chink in the armour of the security fabric and even the senior Public Servants like Lokayukta, Senior IAS Officers and various common people are victim of these attacks in an environment which could be presumed very safe in normal circumstances.

I recollect many instances, when to save themselves from attacks of the assailants, people used to rush to the public offices, as these offices were considered to be safer place and away from the reach of the hooligans. But today, same cannot be said.

The Indian Police Service in Karnataka had a strong tradition, but today it is seen as a pale shadow of its past. The perception that Indian Police Service no longer commands the same stature is getting stronger day by day. The tenure of the Police Officer contrary of the elaborate exercise done by the Hon'ble Supreme Court in famous Prakash Singh's case has been reduced to one year and there had been feeling that this tenure has done no good and even same was discussed in the Senior Officers Conference. A tenure policy is one of the facet in the entire policing and there are many other facets.

I am not trying to burden you with a long letter, but I can say that if we have to build public confidence, the Indian Police Service Officers have to be permitted to play the leadership role. But, sordidly the Indian Police Officers have been punished for discharging their duties, but during the meeting with you, I will bring to your notice many specific instances of recent past so as to demonstrate how Officers have been demoralised.

The investigation has been hijacked by the politician in important cases and law breakers have lost fear of police. Again, I am not trying to be specific at the moment, but I will give specific instances to show that flow of the investigation was changed at the political behest. The specialized Agencies headed by senior Indian Police Service Officers have also become redundant on account of such interferences.

I may state further that Indian Police Service Officers have been frequently transferred, the tenure has become a casualty and even the Bangalore City Commissioner post has been occupied by six Officers in last 4 $\frac{1}{2}$ years, and thus the continuity, the command formation and of course the intrinsic confidence in the service members, all is at abysmally low level.

The recent attack on Hon'ble Lokayukta clearly indicates

that the Police Officers are only fulfilling their contractual obligations to the people in power in not discharging their statutory duty or constitutional obligation which they are duty bound.

The legacy to the next generation every service leaders have to leave and I am extremely unsure that eccentric location of power, with loss of chain of command and of course declining sense of responsibility towards a common man, besides day by day increasing loyalty to men in power for wrong reasons is antithetical towards such legacy.

The course correction in any journey is possible when we accept the flaws and are sensitive for correction. The Indian Police Service Association wants the Officers of the Indian Police Service should decide the path which is in accordance of the statutory and constitutional obligation and return to the path of duty from which they have deviated in public eyes, but also in the eyes of many retired colleagues, besides many admitting and sharing same in close quarters.

In the above circumstances, I will request you to convene a meeting of all the Indian Police Service Officers, discuss threadbare and evolve a strategy considering our immediate goal of a fair and free election and long term goal to imbibe strong professional values in the service and police force of Karnataka.

May I request that, we the Office Bearers of the IPS Association be given an opportunity to demonstrate the specific instances and also to fix an appropriate day and time to convene a meeting of larger group of Indian Police Service Officers and I may further request to invite some retired IPS Officers who can help in achieving the societal goal and the service values.

With

*Yours
Sd/-*

*Smt.K.Ratna Prabha, IAS
Chief Secretary to Government,
Government of Karnataka,
Vidhana Soudha,
Bangalore-560001.*

Copy for information to:

*Smt.Neelamani N.Raju, I.P.S,
Director General of Police (HOPF)
K.S.Police Headquarters,
Nrpatunga Road, Bangalore-560 001.*

*Shri.H.C.Kishor Chandra, I.P.S.,
Director General of Police,
ADGP & Chairman,
Karnataka State Police Housing Corporation Limited,
No.59, Richmond Road, Bangalore 560 025.*

*Sri M.N. Reddy, I.P.S.,
Director General of Police,
Commandant General,
Home Guards,
E/o. Director, Fire Force,
No. 1, Annaswamy Mudaliar Road,
Bangalore 560 042*

*Sri A.M. Prasad, I.P.S.,
Director General of Police – Intelligence
Nrupatunga Road, Bangalore 560 001*

*Sri Praveen Sood, I.P.S.,
Director General of Police – Internal Security,
No. 59, Richmond Road, Bangalore 560 025*

*Sri Padam Kumar Garg, I.P.S.,
Director General of Police (Training)
Carlton House,
Palace Road, Bangalore 560 001*

*Sri Subash Chandra, I.A.S.,
Additional Chief Secretary,
Home Department,
Government of Karnataka,
Bangalore 560 001*

*Sri Pronab Mohanty, I.P.S.,
Secretary,
IPS (Karnataka) Association,
Bangalore – for information and for circulation among members*

***(DR. RAJVIR PRATAP SHARMA, IPS)
ADGP & PRESIDENT”***

7. We note that the letter closes with a request “***May I request that,***

we the Office Bearers of the IPS Association be given an opportunity to demonstrate the specific instances and also to fix an appropriate day and time to convene a meeting of larger group of Indian Police Service Officers and I may further request to invite some retired IPS Officers who can help in achieving the societal goal and the service values.” This letter was deemed to be in a bad taste by the government which issued a showcause notice as Annexure-A5 dated 27.10.2018 which we quote:

“GOVERNMENT OF KARNTAKA

No: DPAR 60 SPS 2018 Karnataka Government Secretariat,
Vidhana Soudha
Bengaluru, Dated: 27.10.2018

From:

*The Chief Secretary,
Government of Karnataka,
Vidhana Soudha,
Bengaluru-560 001.*

To:

*Dr.R.P.Sharma, IPS
ADGP & Managing Director,
Karnataka State Handicraft Development Corporation,
Mahathma Gandhi Road,
Bengaluru.*

Sir,

**NOTICE UNDER RULE 8 OF ALL INDIA SERVICES
(DISCIPLINE & APPEAL) RULES, 1969.**

It is proposed to hold an enquiry against you, Dr.R.P.Sharma, IPS (KN-87) under rule 8(4) of All India Services (Discipline & Appeal) Rules, 1969 on the substance of imputations of misconduct and definite and distinct articles of charge. A statement

of imputations of misconduct in support of each articles of charge, a list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are enclosed as Annexure –I to IV respectively.

You are directed to submit your written statement of defence within a period of 15 (Fifteen) days from the date of receipt of this notice.

You are informed that the enquiry will be held only in respect of such of those articles of charges as are not admitted by you. You should, therefore, either specifically admit or deny the charges.

You are further informed that, if you do not submit your written statement of defence on or before the time limit specified above, otherwise it will be presumed that you have no defence to offer and further action will be taken as per the provisions of All India Services (Discipline and Appeal) Rules, 1969.

*By order and in the name of the
Governor of Karnataka,*

Sd/-

*(Sivakumar.K.B)
Deputy Secretary to Government,
DPAR (Services)"*

8. But then we note something peculiar here. The Hon'ble High Court had passed an order quashing all impediments against the applicant getting a medal on 05.10.2018, 22 days later Annexure-A5 seems to be issued.

9. We had already noted in several other connected litigation between this person and the government that he had rightly or wrongly had

occasion to raise issues against the Chief Secretaries of those time. We had not enquired into whether those instances were correct or not but we have found and judicially noted the existence of the same. Therefore, even though the government could have raised an issue on the letter being issued, we note with some abhorrence the timing of the said letter that it was deemed to diminish the value of the judgment rendered by the Hon'ble High Court on 05.10.2018 that 22 days later this was given, even though the genesis of this letter was on 08.03.2018, more than 7 months before.

10. But apparently the applicant challenged the show cause notice in the Hon'ble High Court and the Hon'ble High Court had granted an interim stay against the consequences of Annexure-A5. Thereafter the matter was disposed off granting liberty to the applicant to approach the Tribunal as the rightful forum to hear the matter. By the time it reached us on 21.12.2018, much water had flown under the bridge. We had considered this matter then and raised a preliminary question as to whether IAS or IPS officers are eligible to participate in a trade union like movement and we had passed the following order on admission:

"(PER HON'BLE DR.K.B.SURESH, MEMBER(JUDL.):

Heard. A very curious example of Trade Unionism subjecting into the Government mechanisms arises here. The Trade Union Act of 1926 is meant for workers. But then there is no element in law which will prohibit even senior officers also from getting themselves together in the form of any association. But having said so an introspection seems to be necessary. They being part of the

managerial structure of governance, if they attend on twin platform of coming together, the already strained relations within and without the administrative setup will be further worsening as the conflict of interests would then be apparent on the face of record. The Indian Civil structure is the skeleton of administrative forms in governance. It can only act in aid and in abetment of civil functionaries who are elected representatives of the people who are popular sovereign. The skeleton cannot therefore have a different point of view than the musculature. That being so, the letter at Annexure-A5 seems to be in bad taste. If the Government found that it must look into the matter further, I do not think that there is anything wrong in it as being a very senior officer and also recipient of many laurels from this Court itself, it is not within the ambit of the applicant to act like a political leader. If there are instances of managerial lapses within the police force, there is a Director General of Police and other officers to look into the matter if at all with the assistance of the Home Secretary. The function of the applicant is only to look into the matters immediately relating to his jurisdiction which is the Managing Director of a company. It is within the scope of the elected executives to determine once again the methods by which the police efficiency can be enhanced.

2. *After having said so, there is no harm in giving a suggestion of enhancement of police efficiency. He should therefore, address directly to his superior who is a Director General of Police and could have discussed with her the possibilities thereof. There is no right as of directly attacking policies of governance and approach the Chief Secretary directly. At this stage, I do not want to say anything more of the nature of infraction elementized in Annexure-A5 as it is yet to be decided. Further, we can only decide this matter after seeing the responsibility and the response of the State Government and whether they want to take it in the spirit in which it is intended. As we will assume that applicant is an honorable man and would have acted out in anxiety that his services would have declined in the eyes of the general public.*

3. *We have no doubt that the applicant is a good officer. We have had opportunities to look into his activities earlier also. Therefore, we will grant him this credit. We do not doubt his intentions. But at the same time, there is no need to have any interim order in the matter as we will be examining this issue at a later stage as particularly so the matter has arisen in the month of October. We are now at the end of December. But we must respect the wisdom of the Hon'ble High Court.*

4. Issue notice by *dasti* to the respondents. Applicant to take out notice and have it served on the respondents within 7 days next and produce appropriate evidence for having done so.

5. The respondents have to file a short reply to the matter. They will also see, in the *interregnum*, if they are able to look into the matter without any prejudice and deem that Annexure-A5 may or may not stand in the way of the applicant's claim for an acknowledgement of his merit. If they think that for some reason that he may not eligible for it, they may pass an order sufficiently speaking and expressing the reasons thereof. As we have found in other cases also, the applicant had raised the issues which may not be acting in compliance with the views of executive governance. We have found that at least on some occasions, the applicant had been right and executive governance wrong. Therefore, there will be a significant examination of these issues and if applicant can be rightfully granted his merit then there should not be any difficulty in resolving this issue. The reply they will file will encompass all these aspects also and they shall inform the cadre controlling authority of the reasons why the applicant should or not be granted this benefit and so that they also aware of the situation and they will also file a reply in the *interregnum* period.

6. Post the matter for further hearing on 03.01.2019."

11. The Government of Karnataka filed a detailed reply indicating that the OA is not maintainable and then proceeded to give no reason why it is not maintainable.

12. Then it would say that this letter he had issued as a President of the Association is a clear misconduct as it is a veiled attack against the State Government. Therefore, with the help of both the counsel we had examined that letter and found that it could have been in better taste. But then as a misconduct it did not reach up to that level. Even as an ordinary citizen, a government servant can put up a proposal before the

sovereign government so that society is protected. Merely by becoming a government servant this right as a citizen cannot be diminished as held by the Hon'ble Apex Court in so many cases. Because of the large volume of the decisions on it, we are not quoting anything in specific as it is an already settled matter. The right of a citizen cannot be diminished except in the way which had been specifically mandated for in the law of the land. That way, there does not appear to be a misconduct lying implicit in that letter even though we have found that it may be in bad taste and also it may not be proper for very senior officers to have associations like this as they are in managerial cadre. We note that similar show cause notices and chargesheets were set aside by the Hon'ble High Court vide order dated 05.10.2018 and the Hon'ble High Court had passed a detailed order as to why it proposed to do so. Even in this matter also, the Hon'ble High Court had entertained the matter and had passed interim order that this show cause notice could not have a life of its own, we are in respectful agreement with the finding rendered, even though interregnum, by the Hon'ble High Court. No other ground seem to be raised to answer the grounds raised by the applicant in his OA. We are now of the opinion that after having heard these matters together for the last 6 years that there exist some sort of an hostile animus against the applicant in the corridors of power in Karnataka. We need not further elucidate that at this point of time. We

hold with regret that this is quite unprofessional and uncalled for. In several proceedings both the Tribunal and the Hon'ble High Court have held that actions of the applicant, even though sometimes may have shown an excessive zeal, had shown his commitment to the society and the governance as a whole.

13. But then the learned Government advocate puts up a question:

1) At this stage, what is to be done?

This question deserves a most anxious consideration. Applicant had been recommended for Police Medal once but failed in that attempt because some extraneous reasons were taken up at that point of time. Once having been recommended in 2013, his suitability is no longer an issue. We had held in those judgments that there was a reason for applicant to raise such issues and had approved them and all these had now become concretized. Therefore, unless we act proactively, we fail in our jurisdiction. Besides, the applicant now withdraws the said letter and we hold that there is nothing in it which will call for severe punitive action against the applicant. Therefore, to serve justice, we venture to pass the following mandates:

1) We direct the State Government to immediately recommend the name of the applicant to be a recipient for President's Medal for this year itself. To make it eligible and for the reasons aforesaid, we quash Annexure-A5.

2) We direct all other authorities to act in aid and abetment of our order passed above and within one month next, even though the Republic Day had already been passed, to grant the said medal to the applicant as relating to his merit to receive the same as no objection has been received at any point of time in all these years in terms of merit.

14. The OA is allowed as above. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/01891/2018

Annexure-A1: Copy of the Central Administrative Tribunal order in OA No. 360/2015 dated 24.01.2017

Annexure-A2: Copy of the order passed in Writ Petition No. 5844/2017 dated 05.10.2018

Annexure-A3: Copy of the representation dated 16.10.2018

Annexure-A4: Copy of the letter dated 25.10.2018

Annexure-A5: Copy of the show cause notice dated 27.10.2018

Annexure-A6: Copy of the representation dated 12.11.2018

Annexure-A7: Copy of the letter dated 08.03.2018

Annexures with reply statement

Nil

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