

URGENT



PERSONAL COPY

**Before the Disciplinary Authority & Chief Secretary (also main witness in this enquiry)**

In the matter of Departmental Enquiry against Sri MN Vijayakumar, IAS, OSD & E/O Principal Secretary, DPAR(Departmental Enquiry Manual), 21<sup>st</sup> Floor, VV Main Towers, Bangalore

**SUBMISSION MADE UNDER PROTEST**

1. The response received from the Under Secretary today (26/11/2011) bearing No. DPAR 386 SAS 2007 (dispatched on 23/11/2011) further confirms the highly malicious criminal and prejudiced acts of the Chief Secretary who has acted as the Disciplinary Authority in spite of being a witness in utter contempt of many decisions of the Hon'ble Supreme Court (Annexure B - Page 10). In this regard I have already given a letter to the Chief Secretary on 11/11/2011 to seek directions from the DoPT as he was named as a witness in Dec 2007 itself.
2. If the Consultant appointed as IA has not properly arranged all the documents (which is the least expected of him) sought by me in the file given to the DA, then it is very obvious that he has given his findings without even bothering to see them. **There is absolutely no ambiguity in the documents sought by me and many of these ought to have been given mandatorily without me asking for them.**
3. In my submissions since 31/10/2011, I have been requesting the Disciplinary Authority & Chief Secretary (also a witness in this case) to give the complete enquiry report and other extremely relevant documents and I had given reasons as to why these are important. I am mentioning again the most important fact that I am being forced to face this enquiry for the lapses on the part of the present Chief Secretary for not taking any action on the corruption report given by me to the Government which was last seen in his possession and

## ANNEXURE B

### Extracts from the Hon'ble Supreme Court Judgment

dated 28<sup>th</sup> September 2010 in CIVIL APPEAL arising out of S.L.P.(C) NO.

19318/2007

*The legal maxim "nemo debet esse judex in propria causa" (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide Secretary to Government, Transport Department v. Munuswamy Mudaliar & Anr., AIR 1988 SC 2232; Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719; and Mineral Development Ltd. v. The State of Bihar & Anr., AIR 1960 SC 468).*

*This Court in A.U. Kureshi v. High Court of Gujarat & Anr., (2009) 11 SCC 84, placed reliance upon the judgment in Ashok Kumar Yadav & Ors. v. State of Haryana & Ors., (1985) 4 SCC 417, and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.*

*The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide: S. Parthasarthy v. State of Andhra Pradesh, AIR 1973 SC 2701; and Tilak Chand Magatram Obhan v. Kamla Prasad Shukla & Ors., 1995 Supp. (1) SCC 21).*

*The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Any one who had a personal stake in an enquiry must have kept himself aloof from the enquiry.*

*Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a Judge in his own cause and no witness can certify that his own testimony is true. Any one who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void.*

"EXTRACTS"

in particular for refusing to compromise with corruption as per his illegal, immoral and unethical suggestion.

4. Till today the very critical portion of the enquiry report of Consultant & IA Sri MP Chinnppa has not been given in spite of many reminders. Other serious things suppressed about the Consultant appointed as IA would be informed to the DoPT immediately after receiving the deliberately withheld portion of the enquiry report. The DA who is also a witness has deliberately suppressed this information as it would have made that Consultant ineligible to get any assignment from the Government. As I have stated in my letter dated 21/11/2011 given to the Chief Secretary to be forwarded to the Secretary, DoPT, the abnormal delay in not giving me the deliberately withheld portion of the enquiry report can only be interpreted to mean that the withheld portion must have been tampered. The letter received today by me from the Under Secretary does not even mention the Annexure A of the Enquiry Report I have been repeatedly seeking. **This deliberately withheld portion is very critical to give my representation as I have submitted my written brief under protest on 27/7/2011 to the Consultant appointed as IA who conducted the enquiry in the most unfair manner at every stage. Not mentioning anything about this deliberately withheld portion of the Enquiry Report gives an impression that it is still being tampered. Otherwise not giving me till today the readily available document Annexure A which I do not have to identify gives rise to serious suspicion and is very likely to affect my very survival.**

5. As far as APARs are concerned, these are extremely relevant as the Chief Secretary who is a witness decided to hold the enquiry though such recommendation made in Dec 2007 itself was rejected by the Advisors to H.E. the Governor during President's Rule. My representations against the APAR's containing perverse remarks violating each and every APAR Rule and Guidelines of GOI covering the enquiry period are extremely relevant as these



have been suppressed by the then Chief Secretary who in spite of being a witness framed baseless charges by suppression, distortion and even destruction of records. He even assumed the role of my Reporting officer when he had not acted as one sidelining my real ROs just to record the adverse remarks. The present Chief Secretary has refused to show me these after I repeatedly refused in writing since Oct 2010 his illegal, unethical and immoral demands to compromise with corruption. Because of this he appointed a Consultant as IA adopting questionable methods (as revealed by none other than the Presenting Officer himself and this fact has been reported by me to various authorities in GOI including H.E. the President, the CVC, and also the local police since February 2011) . Further the fact that the present Chief Secretary gave his official seal to his predecessor after he had retired from Service with criminal intention to doubt my mental health has been mentioned clearly in my representation on the APAR . The previous Chief Secretary in the last APAR shown to me (period from April 2008 to October 2008 ) had recorded that I may be suffering from mental illness and that I should be subjected to medical examination by a Medical Board. He had also mentioned that if the Medical Board found that I was mentally distressed, I should be given proper medical treatment. The present Chief Secretary forced me to appear before a Medical Board in December 2009 even after informing him that against two of the doctors, I had given specific instances of corrupt practices in May 2009 itself. **The findings of the Medical Board have not been communicated to me till today (this fact is also mentioned in my APARS) clearly implying that it is done with ulterior motive.**

6. As far as certified copies of all order sheets signed in full by the Consultant appointed as IA, all statement of witnesses recorded by the Consultant appointed as IA and all memos filed by the Presenting Officer, there is nothing specific to be pointed out to any officer. If I get copies of these then only I would be able to point out what documents have been tampered with and



what documents have been destroyed (In fact my many letters to the Chief Secretary during this most unfair enquiry makes reference to many such tampering done by the Consultant appointed as IA had done after giving uncorrected copies to me. **I am in need of certified photocopies of all order sheets signed in full by the Consultant appointed as IA, all statement of witnesses recorded by the Consultant appointed as IA and all memos filed by the Presenting Officer containing my signature as acknowledgment. Even if I come to the office of the Under Secretary I would be mentioning the same. In fact it was the duty of the Consultant appointed as IA to have properly arranged the documents properly and then only give findings. Now that I have been asked to identify the documents, the only conclusion that can be drawn is that the Consultant appointed as IA has given his findings without proper application of mind to even arrange the documents properly. If the documents are properly arranged by the IA, then there should be no confusion to provide the same.**

7. APARs and action taken on representations against APARs have to be mandatorily shown without making any request. **Even Hon'ble Supreme Court's own directive given to the Chief Secretaries and the GOI in a July 2010 case makes it mandatory to adhere to time frame.** From the continuous harassments, humiliations and criminal obstructions faced by me from the present Chief Secretary who appointed a practicing Consultant violating norms that too when he himself was a witness, it is clear that except to face enquiry he has held me as mentally ill. Not showing the APARs since Oct 2009 and not informing action taken on representations made against APARs from Jan 2007 to Oct 2008 confirms this fact as these had to be mandatorily shown to the officer without making any request. In my case, apart from innumerable letters, letters to GOI, RTI applications and even after filing complaints with the Information Commission these have not been shown making not just a mockery of the APAR but also the entire enquiry as any Departmental Enquiry starts



with APARs and must end with APARs. I have given extracts from the Judgment given by Hon'ble Supreme Court in this regard in the annexure to this representation in Annexure A at page 9 to show how the Chief Secretary in addition to disregarding the APAR Rules & GOI Guidelines is showing utter contempt to the Hon'ble Supreme Court's Judgment dated 30/8/2008 in CIVIL APPEAL NO. 7631 of 2002. **Not showing the APARs only in my case not only confirm the extreme bias and malicious intention but also that the present Chief Secretary(also a witness in this enquiry) while holding me as insane forced me to face the most unfair enquiry and is continuously harassing , humiliating and obstructing me with the criminal intention to make me really insane.**

8. Finally it is extremely unfortunate that though the Chief Secretary took approval of the Chief Minister in December 2010 to post me to simplify major Acts & Rules did not act till March 2011. Ignoring the approval obtained from the Chief Minister in Dec 2010, the Chief Secretary appointed me to the present post to prepare Departmental Enquiry Manual only after I sent a letter to H.E. the President informing that to retain sanity to fight corruption that I would be leaving the Service after the enquiry is over. This was done in spite of the Chief Secretary being fully aware of the fact that I myself was facing the most unfair enquiry. The real reason for giving this posting is given in detail in the confidential letter given by me to the DG & IG of Karnataka Police on 11/3/2011 and this was based on the information given to me while I was waiting in the cubicle of PS to Chief Secretary on 8/3/2011 by an official of GOK. This is further confirmed by the most important fact that after posting me the Chief Secretary made sure that till today I am denied information, facilities and even salary. But against all these criminal obstructions, I have been able to prepare the Departmental Enquiry Manual for use by DA, IA and PO which would be made available on the internet on 9/12/2011 ie the International Anti-Corruption day. **Admitting that I am unable to bear any**



**more harassment, humiliation and obstruction to duty, I have already given my three months notice on 11/11/2011 to the Chief Secretary to be forwarded to H.E. the President to leave the Service to retain sanity.**

9. What is extremely dangerous to public interest is that for acting as per the calls given by H.E. the President and the anti-corruption pledge taken during Vigilance Awareness Week, I am forced to face this enquiry. **Unfortunately, I have to repeatedly make representations even to get the documents which should have been given mandatorily without asking. This is because of extreme bias and vicious attitude of the Chief Secretary (also a witness in this enquiry) towards me for refusing to accept his illegal, unethical and immoral suggestion to compromise with corruption. Chief Secretaries who doubted my mental health and the Chief Secretary who forced me to face Medical Board deliberately ignored the all pervading evidences that Karnataka moved in a direction to become the most corrupt State in the country. I pointed out this trend and though these officers were aware of this trend much earlier to me as they of occupying very critical posts. They did not act even though they had the authority and position to set things right. On the other hand they acted maliciously against me for telling the truth as demanded by my Service Rules.**

#### **PRAYER MADE UNDER PROTEST**

10. All the above confirm that a very sinister conspiracy is going on in the garb of enquiry least of its evil purpose has been to remove me from Service as is mentioned by me in January 2007 itself. While facing this unfair enquiry myself, I have been appointed as OSD and Principal Secretary, DPAR (Departmental Enquiry Manual) to prepare the Departmental Enquiry Manual. I have studied more than 500 judgments of the Hon'ble Supreme Court and from the highly documented extreme bias and ill will shown by the Chief Secretary, I have absolutely no doubt that the present enquiry qualifies to be called as the most unfair enquiry ever held in independent India.

11. In view of the peculiar and unfair enquiry conducted, I request the Chief Secretary and DA (also a witness in this enquiry) to *take the following actions*

i. Provide me a copy of the letter sent to the Secretary, DoPT, GOI seeking opinion on my letter dated 11/11/2011, as Chief Secretary who is also a witness in this enquiry is prohibited from either examining the Report of the Consultant appointed as IA or my representation to the IA's Report that would be given by me after I receive all the documents mentioned above (Please see extracts from Judgment dated 28<sup>th</sup> September 2010 of the Hon'ble Supreme Court in Annexure B at page 10). In fact he is even prohibited from handling the file. The fact that already he has withheld a portion of the Enquiry Report of the Consultant appointed as IA corroborates this. This is very important as the DA was named a witness in Dec 2007 itself and was the last officer in possession of the critical document given by me to the Government and which he never produced though being a witness resulting in this most unfair enquiry. His extreme bias and ill will since October 2009 is well documented and has been given to various statutory authorities in the country.

ii. If the Consultant appointed as IA had given properly arranged enquiry documents (otherwise it shows he never applied mind) to the DA who is also a witness then the need to visit the Under Secretary's office and identify the documents sought by me has to be interpreted to have been made with ulterior motive (I have already suffered because of such a conspiracy on 23/5/2007). Since even the entire enquiry report has not been given to me as required under Law to enable me to make a representation, it would be in the interest of fairness to seal all the enquiry related documents and await for directions from the DoPT, GOI as already requested by me in my letter dated 11/11/2011.

iii. From the extracts from the Judgment dated 30th August 2008 of the Hon'ble Supreme Court at Page 9 in Annexure A (and in fact GOI made a

*pen*



special Rule to make it mandatory by framing the APAR Rules) it is very clear that APARs must have been shown without asking for the same. In my case as the enquiry has been held by taking explanation when my mental health was doubted and further till today the outcome of the forced assessment of mine by a Medical board held in December 2009 has not been communicated, the conspiracy to force me to face this most unfair enquiry by the DA who himself was named a witness in December 2007 further establishes his extreme bias and ill will towards me for repeatedly refusing in writing to compromise with corruption as illegally, unethically and immorally suggested by the Chief Secretary . Hence the importance of all APARs and action taken on representations made against perverse comments made in APARs become absolutely necessary.

iv. If in spite of the above, clear and unambiguous decisions of the Hon'ble Supreme Court (given in Annexure A and B) are continued to be ignored by the extremely biased DA who is also a witness showing utter contempt to the Hon'ble Supreme Court, then I should be permitted to video record the state of enquiry documents in the presence of witnesses and police. I require a minimum 48 hours prior intimation for video recording the enquiry documents in the presence of witnesses and police *(excluding holidays) sen*

26/11/2011

*sen*  
(MN Vijayakumar)

## ANNEXURE A

### Extracts from the Hon'ble Supreme Court Judgment dated 30<sup>th</sup> August 2008 in CIVIL APPEAL NO. 7631 of 2002

*It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted...*

*.... we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. ....*

*We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.*

"EXTRACTS"