

F. No. 018/DPT/013-Vig.IX
Central Vigilance Commission
Satarkta Bhawan
New Delhi

Dated the 23rd October 2018

ORDER

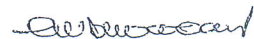
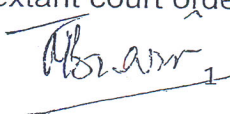

Sub: Order Under Section 8(1)(a), 8(1)(b) of the Central Vigilance Commission Act, 2003 (CVC Act) read with Section 4(1) of the Delhi Special Police Establishment Act, 1946 (DSPE Act)

The Cabinet Secretary vide letter dated 31.08.2018 had forwarded a complaint dated 24.08.2018 containing various allegations against senior functionaries of Central Bureau of Investigation (CBI) with the request for urgent appropriate action. Given the serious nature of the allegations he was of the view that immediate necessary action be taken at the end of the Commission.

2. The allegations made in the complaint were examined in the Commission. The Commission noted that the following allegations are serious in nature having prime-facie vigilance angle, which need to be examined quickly by seeking records from the CBI:

(i) Allegation regarding payment of Rs. 2.00 crore as bribe by one Shri Satish Babu Sana, to the Director, CBI to avoid further interrogation/action in RC 01 of 2017 related to Moin Quershi and others.

(ii) Alleged undue interference and efforts of Director, CBI to exclude one of the main suspects namely Shri Rakesh Saxena in RC 13 of 2017 related to IRCTC case. It is also alleged that instructions were passed by Director, CBI to JD, CBI (Shri Vineet Vinayak) for not conducting search at the premises of Shri Lalu Yadav. It is alleged that later Director, CBI was persuaded by the concerned officials in view of the extant court order, and Shri Vineet Vinayak was allowed by



the Director, CBI at the last moment to take flight by a private Airline to conduct the search in the premises of Shri Lalu Yadav.

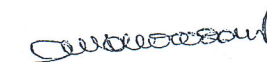
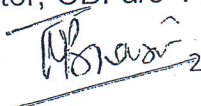
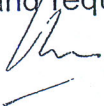
(iii) There are certain other serious allegations also regarding the functioning of the Director, CBI.

3. Considering the seriousness and the source of the allegations, the Commission served 3 separate notices u/s 11 of CVC Act, 2003 dated 11.09.2018 upon the Director, CBI to produce files and documents before the Commission through authorized officials on 14.09.2018.

4. CBI vide their letter dated 14.9.2018 requested the Commission to give some more time and fix another date to enable them to produce the records before the Commission. Commission considered the request of the CBI and adjourned the matter to 18.09.2018 vide Commission's OM dated 14.09.2018.

5. CBI vide their letter dated 18.09.2018 referred to the Secret Note in ID No. 3/2017 dated 21.10.2017 regarding Sh. Asthana and inter-alia informed the Commission that the concern on the integrity of the officer turned out to be true. It is stated that it has found evidence of his criminal misconduct in at least half a dozen cases and the officer is aware of possession of evidence of his criminal misconduct by the Bureau. CBI requested that complaint of Shri Asthana should be viewed as a desperate attempt by a tainted officer to intimidate the officers of the various ranks in CBI. CBI also requested the Commission that such complaint may not be entertained. Irrespective of these facts, without any prejudice, CBI further stated that if the CVC is asking for perusal or enquiry of files, the Bureau will make it available to the Commission at the earliest possible. CBI also sought to know identity of the complainant.

6. The Commission considered the request of the CBI dated 18.09.2018 and clarified that the identity of the complainant cannot be disclosed by the Commission and the verification of contents is more important rather than the identity of the complainant. Considering all the aspects of the matter, Commission finally reiterated its earlier notices and required the Director, CBI u/s 11 (b) & (d) of the CVC Act, 2003 to produce

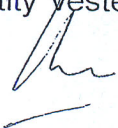


all documents / records / files (requisitioned by the Commission vide three separate notices dated 11.09.2018) before the Commission on 20.09.2018 at 02:00 pm. In this connection, reference was also invited to the applicability of the provisions of sec 8(1) (a), (b), (d) and other applicable provisions of CVC Act, 2003. The Commission observed that allegations made against Shri Rakesh Asthana, Special Director, CBI in a secret note handed over in the meeting of selection committee held on 21.10.2017 was referred to the Director, CBI by the Commission on 09.11.2017 seeking a report. The Commission is yet to receive a report from the CBI despite several reminders. This matter could be taken to logical conclusion only after receipt of report from CBI. Further, Commission vide OM dated 25.09.2018 also desired that Director, CBI furnishes an interim report to the Commission bringing out the investigations carried out so far and the outcome of the investigations conducted so far on the secret note dated 21.10.2017.

7. CBI vide their letter dated 19.09.2018 inter-alia informed the Commission that documents relating to RC 13/2017 EO II and RC 2242017 A0001 (Moin Qureshi case) are being collected from the respective branches and will be produced in due course. The Commission perused the CBI's letter dated 19.09.2018 and desired that the Director, CBI may produce original note sheet file and records related to the RC 13/2017 EO II and RC 2242017 A0001 (Moin Qureshi case) on 24.09.2018.

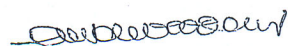
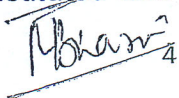
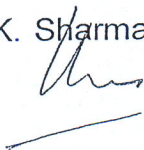
8. CBI vide their letter dated 24.09.2018 informed the Commission that records run into thousands of pages; files scattered at various places like branch, Malkhana, courts, etc. and are being sought and will be produced before the Commission in 03 weeks time. Commission considered the request of the CBI and desired that documents available at various places like Branch, Malkhana, etc. may be collected at the earliest and produced before the commission. However, note sheet files maintained in the CBI head office relating to these cases may be produced before the Commission by 28.09.2018.

9. The Commission considered the CBI's letter dated 09.10.2018 and observed that every entity vested with the powers of superintendence over an agency, more so the


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Central Vigilance Commission as an apex body has to ensure that the name of the complainant is not shared to protect the identity and security of the complainant. The Commission has never informed the CBI, either the source of the complaint or against whom the complaint is being made, but has only sought certain records on the ground that certain allegations have been received regarding handling of such files. It is presumptive on the part of the CBI to state that a particular person has made the complaint against certain other specified persons. Hence, content of allegations made in the complaint is more important than the identity of the complainant. Further, it was informed that the Commission scrupulously keeps away from media in such matters and cannot comment on the statements made by CBI in their letter dated 09.10.2018 that media has access to the complaint. Commission observed that CBI has been given about a month's time so far to produce records relating to two cases. In fact, the Commission has also informed that the files may be shown and may be taken back after examination. While it is true that documents available in the CBI's files are not public documents and are confidential documents, they are certainly documents which can be looked into by the competent supervisory authorities or authorities who are empowered to look into complaints; courts, etc. Further, Commission observed that the question of redacting certain portions of documents is not a permissible act, as it is relevant to see and judge the notings and actions of the officers concerned in dealing of the said files. Hence, plea taken by the CBI was not acceptable to the Commission. The Commission reiterated its earlier requisition under Section 11 (b) and (d) of CVC Act and advised the Director, CBI to cooperate with the Commission to enable verification of certain allegations and to bring the matter to a logical conclusion by submitting these records by the CBI at the earliest and in any case by 22.10.2018. The files / documents have not been submitted till now (23.10.2018). No letter / request for adjournment has even been received by the Commission from the CBI in this regard.

10. In the meantime Sh. Asthana had made several oral and written representations from time to time alleging that Sh. Alok Verma is prejudiced and biased against him and trying to implicate him in certain cases and requested that in the interest of justice and fairplay special investigation team consisting of officers other than Sh. Alok Verma and Sh. A.K. Sharma, JD(P) be constituted and that the supervision of investigation of the



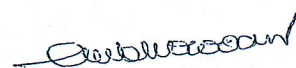
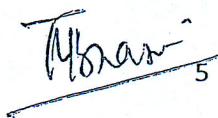
six cases mentioned by him be handed over to any other Joint Director. On a consideration of these representations the Commission issued an advisory on 25.9.18 stating that "while the Commission believes in Director CBI and CBI as such and the Commission has not come to any prima facie conclusion on apprehension of the officer and desired that the apprehension of the officer be conveyed to Director, CBI with request to ensure fairness and impartiality in the investigation and decision making with regard to Sh. Rakesh Asthana, Special Director, CBI".

11. Another letter dated 25.9.18 was also sent to the Director, CBI stating that the report on the Secret Note called for vide Commission's letter dated 9.11.2017 and subsequent reminders has not been received even after lapse of 10 months. The Commission conveyed its desire that the report on the issues raised in the Secret Note dated 21.10.17 be submitted immediately and further if inquiries on the issues has not reached finality, an interim report bringing out the investigations carried out so far and the outcome thereof be submitted by 3.10.18.

12. As there was no response, a DO letter dated 3.10.18 was sent to Director, CBI requesting him to participate in a meeting with the CVC and Vigilance Commission on 4.10.2018 to discuss the representation of Sh. Asthana. Director, CBI did not attend.

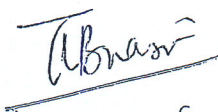
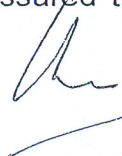
13. Subsequent to receipt of further representations, another letter dated 15.10.18 was sent to the Director, CBI stating the Special Director's apprehensions of bias and prejudice and observed that enquiry/inquiry/investigation, if any to be conducted against any officer by the CBI, prior approval of the competent authority under Section 17 A of the PC Act be kept in mind. The Director, CBI was also reminded to get a report sent on the Secret Note submitted at the earliest and latest by 22.10.18. The said report has not yet been submitted.

14. In the meantime it has come to light that on 15.10.18 the CBI has registered RC 13A of 2018 of AC III, New Delhi under Section 7 & 13(2) r/w 13(1)(d) & Section 7A of PC Act as amended in 2018. It is worth mentioning that Section 13(1)(d) has since



been omitted. It is noticed that the said RC has been registered on the complaint of one Sh. Satish Babu Sana resident of Hyderabad, who is one of the accused in a case being investigated by Special Director CBI, in respect of whom the Special Director claims that he had submitted proposal for arrest and the Director has not granted permission till date. Subsequently the IO Sh. Devinder Kumar, DSP of the case was subjected to searches and thereafter arrested. Representations dated 15.10.18, 18.10.18, 19.10.18, 20.10.18 have been made by Sh. Asthana bringing to the notice of the Commission reiterating his earlier apprehensions and seeking remedies. A letter dated 20.10.18 was submitted to Director, CBI by Sh. Devinder Kumar, DSP stating that his residential and office premises are being searched in RC No. 13(A) 2018 on the basis of false and spoofed communications with accused Sh. Satish Babu Sana. He has stated that he submitted a proposal for arrest and custodial interrogation of Sh. Satish Babu which is still pending for decision. He further stated that he did not enter into any communication with accused Sh. Satish Babu Sana other than official communication and he has been made a scapegoat and the entire exercise is due to ulterior purposes. He expressed his anguish for the searches based on fabricated documents and about the irreparable damage to his reputation. He requested for intervention and justice. A copy of this letter was delivered to Commission on 22.10.18.

15. Sh. Sai Manohar, JD SIT, CBI submitted a letter dated 22.10.18 enclosing therewith a Top Secret note recorded by Special Director CBI Sh. Asthana on information allegedly received from a source in Moin Quereshi case that Sh. Satish Sana paid a bribe of Rs. 2 crore to Director, CBI to avoid any action. The said note mentions some more allegations and was marked to JD SIT with directions that he be informed of the developments on investigation on day to day basis. A copy of a handwritten statement dated 1.10.18 allegedly written by Sh. Satish Babu at CBI HQ stating that he had discussed his case with an old friend and a prominent person who allegedly stated that he would talk to concerned Director and inform. He alleges that his contact person met Director, CBI, apprised him of the repeated examinations and has been assured that he would not be called again for interrogation. It is stated that he



was under the impression that the investigation against him was completed till he was detained at Hyderabad Airport.

16. From the aforesaid, it may be observed that Director, CBI has not been cooperating in making available the records / files sought by the Commission relating to certain serious allegations referred to above. Opportunities have been given for producing such records. After seeking several adjournments, CBI assured the Commission vide letter dated 24.9.18 that records / files will be furnished within 03 weeks. Despite repeated assurances, the records / files have not been submitted.

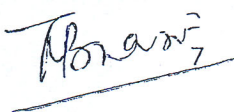
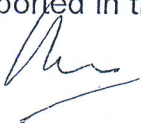
17. The Commission has also taken note of the fact that the CBI has not produced records sought in some other cases also.

18. From the aforesaid the non cooperation with the Commission, non compliance with the requirements/directions of the Commission, and willful obstruction in the functioning of the Commission is established.

19. As per section 8(1)(a) of the CVC Act, the function and power of the Commission is to exercise superintendence over the functioning of DSPE in so far as it relates to the investigation of offences alleged to have been committed under PC Act, 1988.

20. To conduct an inquiry into the allegations contained in the complaint referred to the Commission by Cabinet Secretary vide letter dated 24.08.2018, Commission in exercise of its powers u/s 8 (1) (a) , (d) & Section 11 of the CVC Act, required the production of the relevant records. Though about forty days have lapsed the relevant records have not been produced. In view of the non cooperation and non- compliance, Commission is not able to discharge its function of taking a view on the serious allegations.

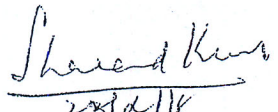
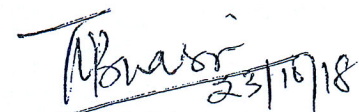
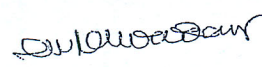
21. In the meantime, an environment of hostility and faction feud has reached its peak in the CBI leading to potential loss of reputation/credibility of the organisation. The grave allegations of corruption by senior functionaries of CBI one against another, also widely reported in the media has vitiated the official environment. It has also vitiated the



working environment in the organisation which has deep and visible impact on the other officers.

22. Section 4(1) of the DSPE Act vests the power of superintendence upon the DSPE with this Commission. Section 8(1)(a) and (b) of the CVC Act also empowers the Commission to exercise superintendence over the functioning of DSPE and to give directions to DSPE. Keeping in view these provisions and various rulings of the Hon'ble Supreme Court on the interpretation of "superintendence" and the present situation prevailing in the CBI, the Commission after a serious and due consideration of all the facts and circumstances and pending the process of inquiry into every issue arising in view of allegations and counter allegations directs that Sh. Alok Verma, Director, CBI be hereby divested of and shall not exercise any function, power, duty and supervisory role in respect of cases already registered and/or required to be registered and/or being inquired/enquired /investigated under the provisions of the PC Act 1988 till this interim measure is varied/modified/vacated.

23. This order is passed keeping in view the extraordinary and emergent situation which has arisen. Due process of law in compliance with the principles of natural justice shall be observed before giving finality to the interim measure referred above and also during the decision making process.

 (Sharad Kumar) Vigilance Commissioner	 (T.M. Bhasin) Vigilance Commissioner	 (K.V. Chowdary) Central Vigilance Commissioner
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To,

Sh. Alok Kumar Verma,
Director, Central Bureau of Investigation,
New Delhi