

Central Bureau Of Investigation & Anr vs Ajay Kumar Bassi & Ors on 10 September, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9349/2021

CENTRAL BUREAU OF INVESTIGATION & ANR..... Petitioners

Through: Mr. Ripudaman Bhardwaj
with Mr. Kushagra Kuma
for CBI.

versus

AJAY KUMAR BASSI & ORS.

Through: Mr. Anil Soni, CGSC fo
No. 3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 10.09.2021

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 9349/2021 and CM No. 29037/2021

3. The present petition is directed against the order dated 11.01.2021 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 27/2021 - whereby the Tribunal has partially allowed the Original Application preferred by the respondent, and quashed the second Article of Charge framed against the respondent. The two Articles of Charges framed against the respondent were as follows:-

"Article 1 That Shri Ajay Kumar Bassi, Dy. SP, CBI was transferred from AC-III Branch, New Delhi to Port Blair Branch vide order dated 24.10.2018 and he was relieved on 24.10.2018 by AC-III, Branch with direction to report to CBI Port Blair Branch. But Shri Ajay Kumar Bassi did not comply with the order and did not join office at CBI, Port Blair even after lapse of available joining time and remained

absent from duty, authorisedly till date. Article 2 Shri Ajay Kumar Bassi, Dy. SP, CBI filed an Interlocutory Application in WP No. 1309 of 2018 before the Hon'ble Supreme Court of India without obtaining any previous sanction of the Government or intimation. Thus, Shri Ajay Kumar Bassi bypassed the appropriate administrative channel for purported grievance redressal, undermining the executive hierarchy. Shri Ajay Kumar Bassi has thus conducted himself as undisciplined member of a Government Department.

By the above acts of commission and omission, Shri Ajay Kumar Bassi, Dy. SP, CBI has committed grave misconduct in as much as he failed to maintain discipline in the discharge of his duties and also failed to implement the lawful orders of the Competent Authority, duly communicated to him and remained absent from duty unauthorized. Thereby Shri Ajay Kumar Bassi, Dy. SP, CBI violated Rule 3 (1), (iii) & (xix) and Rule 19 (1) of Central Civil Services (Conduct) Rules, 1964."

4. By the impugned order, the Tribunal has quashed second Article of Charge, the substance whereof was that the respondent had bypassed "the appropriate administrative channel for purported grievance redressal, undermining the executive hierarchy." It was alleged that the respondent had, thus, conducted himself as undisciplined member of a Government Department.

5. The submission of Mr. Bhardwaj - learned counsel for the petitioner/ CBI is that the Tribunal has quashed the second Article of Charge without any discussion and by a summary order. Though, there may be some merit in this submission of learned counsel for the petitioner, we are still not inclined to interfere with the impugned order. The reason for this is that on a reading of the Articles of Charges and the Statement of imputation of misconduct, do not disclose as to how it is claimed that the act of the respondent in availing of a legal remedy could be treated as misconduct.

6. We have already set out hereinabove the second Article of Charge, which has been quashed by the Tribunal. We may also set out hereinbelow the statement of imputation of misconduct against the respondent. The said statement is a common statement for both the Articles of Charge, and reads as follows:-

"STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI AJAY KUMAR BASSI, Dy. SP, CBI, NEW DELHI ARTICLES OF CHARGE- I & II That Shri Ajay Kumar Bassi, Dy. SP. CBI was transferred from AC-III, CBI, New Delhi to CBI, ACB Port Blair vide CBI Head Office (HO) order dated 24.10.2018 in public interest. In pursuance of the said transfer order, he was relieved from his duty w.e.f. 24.10.2018 (F/N) with the direction to report to HOB, CBI, ACB, Port Blair. But even after lapse of joining time entitled to him, he wilfully remained absent from duty and didn't comply with the transfer order. Shri Ajay Kumar Bassi, Dy. SP didn't join his new place of posting i.e. CBI, Port Blair, Branch without any authority. That Shri Ajay Kumar Bassi without any notice or exhausting the official forum available to him challenged the transfer order dated 24.10.2018 in the Hon'ble Supreme Court of India in the form of an Interlocutory

Application. Hon'ble Supreme Court of India vide its order dated 08.01.2019 disposed off the Interlocutory Application (IA) No 157829 of 2018 in the Writ Petition (Civil) No. 1309 of 2018 titled as Alok Kumar Verma Vs Union of India and others with the liberty to the applicant to challenge the transfer order in appropriate manner and before the appropriate forum. The Hon'ble Apex Court did not grant any relief to Shri Ajay Kumar Bassi in the said order.

That Shri Ajay Kumar Bassi, DSP submitted a representation to Director, CBI on 09.01.2019 for reconsideration/cancellation of his transfer order and the Director. CBI cancelled the said transfer order vide order No. 51/2019 dated 09.01.2019.

That Shri Ajay Kumar Bassi, DSP submitted joining report dated 10.01.2019 to the HOB, CBI, AC-III in the wake of CBI Order No. 51/2019. It was followed by intimation dated 11.01.2019 from Shri Ajay Kumar Bassi, Dy. SP telephonically regarding his inability to attend office due to illness and request for one day CL dated 11.01.2019.

That vide CBI, HO order No. 65/2019 dated 11.01.2019 the earlier order dated 09.01.2019 was declared as non-est and consequently all actions in pursuance thereof by all concerned were declared null and void and the status- quo ante as on 08.01.2019 was restored. Despite that Shri Ajay Kumar Bassi, DSP neither joined ACB Port Blair Branch nor submitted any intimation regarding his absence from duty.

That, in the meantime, Shri Ajay Kumar Bassi, filed a Writ Petition (Civil) No. 90/2019 with IA No. 14801/2019 (Application for ex parte stay) before Hon'ble Supreme Court of India with a prayer to quash/set aside the impugned transfer Order No. 65/2019 dated 11.01.2019 and to issue a writ order or direction of like nature granting an interim ex-parte stay of the transfer order bearing office Order No. 65/2019 dated 11.01.2019. No relief in the form of stay or orders has been given by the Hon'ble Apex Court. Despite having knowledge and that there is no stay on his transfer order to CBI, Port Blair Branch, he deliberately did not comply and never joined the new place of posting i.e. Port Blair.

The IA No. 14801/2019 (Application for ex parte stay) was filed before the Hon'ble Supreme Court by Shri Ajay Kumar Bassi, which was meant for cancellation of his transfer order.

That Shri Ajay Kumar Bassi, DSP was intimated on 24.01.2019 by the Office of Superintendent of Police, AC-III, New Delhi that his joining report could not be accepted in CBI, AC-III as his relieving order was not issued by the Port Blair Branch, it was also communicated to him that his leave application also could not be considered for the same reason. Shri Ajay Kumar Bassi, DSP, however, continued to defy the transfer order CBI, Head Office and did not join the new place of posting.

That, Shri Ajay Kumar Bassi, DSP submitted a representation dated 02.03.2019 to HOB, AC-III, New Delhi to regularize absence from duty from 24.10.2018 to 08.01.2019 and to release his salary for the months 11/2018, 12/2018 & 01/2019. He was informed vide CBI HO communication dated 11.06.2019 that his request would be decided on joining his new place of posting i.e. CBI, Port Blair. The office intimated regularly to Shri Ajay Kumar Bassi, DSP who knowingly and repeatedly did not comply with the legal order of CBI Headquarter transferring him to CBI, Port Blair from CBI, AC-III, New Delhi. Shri Ajay Kumar Bassi remained unauthorisedly absent from duty since 24.10.2018 till date, disregarded administrative channel to appeal against his transfer order, thereby exhibited arbitrariness, indiscipline and unbecoming conduct of a government servant. His willful absence from duty amounted to misconduct and rendered him to liable to face disciplinary action.

That as a public servant, it was expected from Shri Ajay Kumar Bassi, DSP to comply the office order, which he failed to do despite several communications. He willfully defied the Office order of transfer and was willful absent from duty and also moved the court with a purpose to vindicate the official act of Government Servants.

By the above acts of commission and omission, Shri Ajay Kumar Bassi, DSP has committed grave misconduct in as much as he failed to maintain discipline in the discharge of his duties and failed to implement the lawful orders of the competent authority, duly communicated to him and willfully remained absent from duty and also willfully violated the existing norms and regulations and moved to the Hon'ble Supreme Court of India and challenged his transfer order in form of Interlocutory Application, without obtaining the prior permission/without giving any intimation to the Department. These acts are found to be unbecoming of a Government Servant and violation of 3(1)(ii),(iii) & (xix) of Central Civil Services (Conduct) Rules, 1964 " (emphasis supplied)

7. In response to our specific query to Mr. Bhardwaj, as to which is the service rule - which is alleged to have been breached by the respondent - when he moved an application before the Supreme Court, Mr. Bhardwaj has argued that the said conduct of the respondent was in breach of Rule 19 of the CCS (Conduct) Rules, 1964. The said Rule has been set out in the writ petition and reads as follows:-

"19(1) No Government servant shall except with the previous sanction of the Government have recourse to any Court or to the Press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of a defamatory character.

Provided that if no such sanction is received by the Government servant within a period of three months from the date of receipt of his request by the Government, he shall be free to assume that the permission as sought for has been granted to him. (2) Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity and

where any action for vindicating his private character or any act done by him in private capacity is taken, the Government servant shall submit a report to the prescribed authority regarding such action." (emphasis supplied)

8. On a plain reading of the aforesaid Rule, it is evident that the circumstances in which the said Rule would be attracted, are not present in the present case. The said Rule contemplates a situation where, against the officer in question, in relation to his official acts, there is adverse criticism, or an attack of a defamatory character and the officer concerned wishes to vindicate himself. In that situation, it is imperative for him to obtain previous sanction of the Government for recourses to any Court, or to the Press.

9. In the present case, it is not even alleged that the respondent had approached the Supreme Court for his vindication on account of adverse criticism, or an attack of a defamatory character qua an official act. As aforesaid, he approached the Supreme Court to challenge his transfer by the respondent. No other Rule has been brought to our notice, whereunder the act of the respondent in approaching the Court to seek relief against his transfer was barred without obtaining any prior sanction of the Government.

10. We, therefore, do not find any merit in the petition and the same is, accordingly, dismissed.

VIPIN SANGHI, J JASMEET SINGH, J SEPTEMBER 10, 2021 kd