

# Union Of India vs P. Balasubrahmanayam on 4 March, 2021

**Equivalent citations: AIR 2021 SUPREME COURT 1257, AIR ONLINE 2021 SC 100**

**Author: Sanjay Kishan Kaul**

**Bench: Hrishikesh Roy, Sanjay Kishan Kaul**

Reporta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3592-3593 OF 2020

UNION OF INDIA AND ORS.

...APPELLANTS

VERSUS

P. BALASUBRAHMANAYAM

...RESPONDENT

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The respondent joined the Department of Posts as Postal Assistant in the year 1991 and earned his promotion from time to time to Assistant Superintendent of Posts in the year 2008, a Group-B Gazetted cadre post. A charge memo bearing No. Vig/105/10 dated 13.04.2010 (hereinafter referred as “the Memo”) was issued to him by the Disciplinary Authority, Department of Posts under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred as “the 1965 Rules”). The Memo enumerated 9 charges. Suffice to say that certain charges related to procedural lapses in discharge of duties while another set of charges dealt with alleged illegal gratification received by way of bribes. Accordingly, violation of duties under the Central Civil Services (Conduct) Rules, 1964 was alleged.

2. The respondent contested the Memo at the threshold itself on the ground that the charges included allegations of bribery and thus had a vigilance angle. As such, it was averred that it could not have been issued without prior approval of the Central Vigilance Officer (hereinafter referred as

“CVO”) as mandated by a circular dated 18.01.2005 of the Department of Posts, Ministry of Communication and I.T. (hereinafter referred to as “the Circular”). The Circular advised that all cases of officers below the level of Group ‘A’ involving vigilance angle should be referred to the Directorate for consideration and advice by the CVO of the relevant department. Even for closing the cases after a preliminary enquiry report, the procedure was stated to be mandatory. The circular reads as under:

“Confidential No.7-4/CVC/2004-Vig Government of India Ministry of Communication & I.T. Department of Posts Dak Bhawan, Sansad Marg New Delhi-110001 Dated: 18.1.2005 To All Principal Chief Postmaster General, All Chief Postmaster General, Director Postal Staff College India, Ghaziabad Additional DG, Army Postal Service, Chief Engineer (Civil), Headquarters All Directors, Postal Training Centres (By name) Subject: Jurisdiction of Central Vigilance Commission in retain ( sic) to Officers of the level of Group ‘B’ Gazetted.

..... I am directed to invite attention to this office Memo of even number dated 31st May 2004 on the subject captioned above vide which a copy of office order No.98/VGL/15 dated 16.04.2004 from Central Vigilance Commission was sent to you for information/necessary action as also for bringing the same to the notice of all concerned.

2. It may be recalled that as per the previous guidelines vigilance cases of the Gazetted Officers of the Central Government and its equivalent in other Government Organizations were to be referred to the Central Vigilance Commission (CVC) for advice. However, vide their aforesaid Office Order dated 16.04.2004, the Commission have delegated their powers to the Central Government Ministries/Organisations with regard to vigilance cases of Gazetted Officers below Group ‘A’ of Central Government, viz., officers of the level of Group ‘B’ Gazetted.

3. While delegating their powers, the CVC felt that appropriate expertise is available to the CVO and expected that the CVO would exercise proper check and supervision over vigilance cases of officers of the level of Group ‘B’ Gazetted and would also ensure that the cases of these officers are disposed of expeditiously within the time frame stipulated by the Commission and further that the punishment awarded to these officers would commensurate with the gravity of the misconduct established on his part. The Commission is further noted that if they come across any matter, which in their opinion, is ( sic) not been handled properly, it may recommended ( sic) its review by the appropriate authority or may give such directions as it considers appropriate.

4. In view of the above delegations and expectations of the CVC, all the Heads of Circles and other concerned authorities are hereby advised that all cases of officers below the level of Group ‘A’ involving vigilance angle should be continued to be referred to the Directorate for consideration and advice by the CVO of the

Department. The CVO, may in turn, advise for closure of the case/initiation of major/minor penalty action/any other administrative action as deemed fit and proper in the circumstances of the case as also keeping in view of the recommendation of the Head of the Circle.

5. It may again be reiterated that above procedure is mandatory and is to be followed in all cases involving vigilance angle including those ones where the Heads of the Circle are of the opinion that the case needs to be closed, after evaluation of the preliminary inquiry report.

6. The CVC has further reiterated that their advice would also be necessary in cases of difference of opinion between the disciplinary authority and the CVO with regard to the action to be taken against officers who are not within the jurisdiction of the Commission if these differences cannot be resolved with the intervention of the Secretary of the Ministry or Head of the Department concerned.

7. Further, in respect of composite cases involving Group 'A' level officers and other Group 'B' or even lower level officials, the advice of the Central Vigilance Commission will be required as before.

8. The Heads of Circles may please note the above instructions and ensure strict compliance of the same.

Sd/-

(S.C. BARMA) DIRECTOR (VIG) Copy also forwarded for information/necessary action to:

1. Sr. PPS to Secretary (Posts).
2. Member(P), Member (D), Member (O).
3. Sr. D.D.G.(C.P.).
4. CGM, PLI/CGM(BD)/JS&FA.
5. All DDsG/Secretary (Postal Services Board)
6. ADG(Vig-1), ADG(Vig-II) & ADG(Vig-III), Postal Directorate.
7. Guard Filed.

Sd/-

(P.H. PILLAI) SECTION OFFICER(VIG)"

3. In this background, the respondent assailed the Memo by filing OA No. 421 of 2015 before the Central Administrative Tribunal at Hyderabad (hereinafter referred to as “the Tribunal”). The validity of the Memo was inter alia assailed on the grounds that (a) the mandatory advice of the CVO had not been obtained; (b) the charge memo was vague, non-specific, and in violation of sub-Rule (i)(3) of Rule 14 of the 1965 Rules, and (c) that there had been an inordinate delay in concluding the proceedings. The appellant department contested the petition and the tribunal decided against the respondent by order dated 19.09.2016. We may notice at this stage that the litigation before the Tribunal was not the first round of litigation but was preceded by earlier petitions being filed. The Tribunal opined that the issue of the prior approval of CVO had already been dealt with in an earlier proceeding initiated by the respondent in O.A. No. 861 of 2013. There, it was concluded that the approval was more of a safeguard against dropping of inquiry proceedings against delinquent officials on fictitious grounds. Additionally, the delay in concluding the proceedings was held to be attributable to the respondent on account of repeated petitions alleging bias and related appeals preferred by him. In this context, a direction was issued to conclude the inquiry within 6 months. This order was assailed by the respondent by filing a Writ Petition No. 42546 of 2016 on the sole ground that the Memo had not been issued in compliance of the Circular. The High Court opined that the Circular did not mandate any prior approval of the CVO before issuance of the memo. It was also noted that not all charges against the respondent revolved around allegations of bribery. The respondent then approached this Court by way of SLP(C) No.9571 of 2017.

4. Meanwhile, the departmental proceeding against the respondent culminated in an adverse report against him bearing, Memo No. Vig/Misc./VM/2012/II dated 24.03.2017 (hereinafter referred to as “the 2017 Memo”) was issued. In terms of the 2017 Memo, none of the charges of bribery were made out against the respondent but all charges relating to procedural lapses on the part of the respondent were held to have been proved. The respondent was inflicted with a punishment of compulsory retirement from service with immediate effect.

5. SLP(C) No.9571 of 2017 was listed after this on 05.04.2017 and was disposed of in view of the aforesaid final order having been passed but with the liberty to the respondent to re-agitate the issue by challenging the order of punishment in the 2017 Memo.

6. Pursuant to this, the next round was initiated by the respondent by filing OA No. 344 of 2017 before the Tribunal assailing the Memo inter alia on the ground of non-compliance with the Circular. The Tribunal gave its verdict on 27.02.2019. It is material to note that the Tribunal took the view that, since the bribery charges were not proved, the case of the respondent could not be said to be prejudiced by not referring it to the CVO. Additionally, on the argument of the respondent that sufficient opportunity to produce documents and witnesses was not provided, the Tribunal found that the procedural lapses had been found against the respondent on the basis of certain admissions and explanations offered by him. As such, it was felt that on the appreciation of evidence, the conclusion was just and proper.

7. Thereafter, the Tribunal proceeded to examine the issue of proportionality of punishment. It found that the punishment of compulsory retirement was unduly harsh and shockingly disproportionate considering that none of the bribery charges had been found sustainable. To that

extent, the order of the disciplinary authority was set aside with a direction to impose an appropriate minor penalty instead within 8 weeks.

8. This order was assailed by both the parties before the High Court of Andhra Pradesh by filing Writ Petitions Nos. 3646 and 8606 of 2019. The respondent sought quashing of the proceedings ab initio on the ground that the Circular, read with Rule 12 of the Postal Manual Volume III, would totally vitiate the entire proceedings.

#### “Postal Manual Volume III Consultation with Central Vigilance Commission

12. In all Vigilance cases relating to Gazetted officers, the Central Vigilance Commission should be consulted during the progress of the case at the following stages:

XXXX XXXX XXXX XXXX

(v) The report of the Enquiry Officer conducting oral enquiry into any departmental proceedings together with the full record of the case should be forwarded to the Central Vigilance Commission who will advise the disciplinary authority concerned as to the course of further action to be taken.

XXXX XXXX XXXX XXXX” The appellants, on the other hand, were aggrieved by the direction on the issue of punishment.

9. In terms of the impugned judgement of the High Court dated 22.07.2019, it was opined at the outset that there may be some difficulty in distinguishing vigilance cases from non-vigilance cases. The Circular and Rule 12 had to be read in the context of safeguarding the interest of the employees and to avert initiation of disciplinary proceedings in unwarranted circumstances. The case of the respondent was said to have a vigilance angle as it involved allegations of bribery. On the plea of the appellants that the issue was resolved in the earlier proceedings, it was held that there was no finality to that issue. The effect of Rule 12 of the Postal Manual had not been considered before, and no finding was recorded for the same. It was also noted that the Supreme Court, while disposing SLP No. 9571 of 2017 arising out of the earlier had given liberty to agitate this issue. The writ petition filed by the respondent was allowed with an order that the direction of imposition of minor penalty be set aside. The petition filed by the appellant was dismissed and the authorities were directed to reinstate the respondent into service with all consequential benefits.

10. Leave was granted in the present matter on 29.10.2020 and the contempt proceedings were directed to be kept in abeyance.

11. Mr. K.M. Nataraj, learned Addl. Solicitor General substantively urged on the premise that there was no mandatory requirement to obtain CVO’s advice before initiating disciplinary proceedings. More so, this procedural requirement was co-relatable to vigilance cases alone. In the alternative, it was urged that this, in any case, would not vitiate the entire proceedings as the administrative rules, regulations and instructions would not have statutory force and would not give rise to any legal rights in favour of any parties. In this behalf, reliance was placed in the judgment of Union of India

and ors. vs. Alok Kumar<sup>1</sup> where a pari materia circular of the Central Vigilance Commission was considered. In that behalf, it was opined that the test which is to be applied is whether any prejudice was caused to the employee by not obtaining of the CVC's advice at the first stage. It was concluded that no prejudice had been caused in that case.

12. Learned ASG also made a reference to Chief Commercial Manager, South Central Railway, Secunderabad & Ors. vs. G. Ratnam & Ors.<sup>2</sup> In the given facts of the case, Indian Railways Vigilance Manual, 1996, more specifically paras 704 and 705, were examined qua the instructions contained therein and the consequence of non-compliance thereof by the investigating officer dealing with the departmental trap. The instructions were held to be procedural in character and not of a substantive nature and they were meant not for the delinquent officer but for guidance of the 1 (2010) 5 SCC 349 2 (2007) 8 SCC 212 investigating officer. Thus, a violation thereof ipso facto was held not to vitiate the departmental proceedings.

13. On the other hand, the respondent, who appeared in-person, contended that the Circular was statutory in nature as it was issued under the authority of the Central Vigilance Commission, being a statutory body. Thus, the procedure prescribed by the Circular and Rule 12(v) of the Postal Manual Vol. III was mandatory, which was not complied with. The respondent relied on a few judgments in this behalf<sup>3</sup>. It may be observed that the same were generic in character on the point of non compliance with executive instructions. Thus, if procedural safeguards are provided, these judgments note, the same should be observed as they prevent any arbitrary exercise of power. In fact, in one of the cases, the expression used is “a departmental instruction cannot totally be ignored”<sup>4</sup> [emphasis supplied]. The principle propounded was that any wanton or deliberate deviation in implementation of the rules could breed indiscipline among the services and amount to undue favour to some while denial of equality among many <sup>5</sup>. Suffice to say, that in order that such executive instructions have force of statutory rules, it must be shown that they have been issued under the authority conferred on <sup>3</sup> Veerender Kumar Dubey v. Chief of Army Staff (2016) 2 SCC 627; Moni Shankar v. Union of India (2008) 3 SCC 484; Jt. Action Committee of Airlines v. Director General of Civil Aviation (2011) 5 SCC 435; A.N. Sehgal & Ors. v. Raje Ram Sheoran 1992 Supp.(1) SCC 304; Union of India v. K.P. Joseph & Ors. (1973) 1 SCC 194; Chief Commercial Manager v. G. Ratnam (2007) 8 SCC 212 <sup>4</sup> Moni Shankar case (supra) <sup>5</sup> A.N. Sehgal case (supra) the Central Government or the State Government by some statutes or under some provisions of the Constitution providing therefor<sup>6</sup>.

14. We may add that the respondent also sought to contend that the action of the appellants was retributive in character as he had earlier endeavoured to highlight the manipulations in the result of Postal Service Group-B cadre examinations and the legal proceedings that followed therefrom.

15. We have given thought to the aforesaid limited controversy and examined the records. We are of the view that the reliance on the Circular really does not help the case of the respondent inter alia for the reason that once it is found that the case does not have a vigilance angle, albeit after conclusion of inquiry, no prejudice can be said to have caused to the respondent. If we may say so, the fairness of the departmental proceedings is obvious on the fact that all charges relating to bribery had been held in favour of the respondent and those charges have been rejected. The only charges found

proved are of procedural irregularities, over which there are concurrent findings of the relevant authorities based on certain admissions made by the respondent himself. The proceedings have also got prolonged because at every stage the respondent sought to challenge them in judicial forums, and that too not very successfully.

#### 6 Chief Commercial Manager case (supra)

16. We find it difficult to disturb the findings of the disciplinary authority insofar as the procedural lapses are concerned. It really shows that there was negligence on the part of the respondent in performing his duties. That being so, we do not feel it was appropriate for the High Court to have set aside the result of the proceedings against the respondent by giving him a clean chit on the issue as a consequence of the Circular not being followed. It would be right to say that suppose these charges of bribery had not been levelled and only procedural lapses were examined, this plea would not have been open to the respondent.

17. In the facts of the case, the result has arisen after the inquiry but then, at the cost of repetition we may say, there are no adverse consequences to the respondent with respect to the bribery charges, but in fact favourable consequences.

18. We are, thus, of the view that the course adopted by the Tribunal was the appropriate course of action, i.e., the procedural lapses having been found and the bribery allegation having been rejected the appropriate course would have been to examine only the issue of disproportionality of punishment.

19. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court<sup>7</sup>. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing sight of the fact that the allegations qua bribery had not been found against the respondent.

20. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained. 7 S.R. Tewari v. Union of India and Anr. (2013) 6 SCC

602

21. The result of the aforesaid is that the impugned judgment of the High Court is set aside and that of the Tribunal is restored. Necessary consideration not having taken place, the appellants will do the needful in terms of the order of the Tribunal within 8 weeks from today and giving all consequential benefits thereof to the respondent. We hope that this long drawn out service dispute would now come to an end after almost a decade.

22. The appeals are allowed in the aforesaid terms leaving parties to bear their own costs.

.....J. [SANJAY KISHAN KAUL] .....J.  
[HRISHIKESH ROY] NEW DELHI.

MARCH 04, 2021.