

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 42546 of 2016

ORDER: (*Per VRS,J*)

Aggrieved by the dismissal of his application by the Central Administrative Tribunal for quashing a charge memo, an Assistant Superintendent of Posts has come up with the present writ petition.

2. Heard Mr. D. Ramakrishna, learned counsel for the petitioner.

3. The one and only ground, on which the petitioner challenges the charge memo, is that the charge memo was not issued with the prior approval of the Central Vigilance Commission (CVC), as mandated by a Circular bearing No.7-4/CVC/2004-Vig., dated 18.01.2005, of the Department of Posts, Ministry of Communications, Government of India. Apart from the Circular, the petitioner also relies upon two decisions of the Supreme Court, one in *Union of India and others Vs. V. Vinod Kumar and others*¹, and another in *Union of India and others Vs. B.V.Gopinath*² (Civil Appeal No.7761 of 2013, dated 05.09.2013).

¹ (1996) RD-SC 804 (15th July 1996)

² 2014 (1) SCC 351

4. We have carefully considered the materials on record and the submissions of the learned counsel for the petitioner.

5. The charges framed against the petitioner, in brief, are that while working as Assistant Superintendent of Posts, the petitioner claimed false travelling allowance and daily allowance in his tour T.A. bill for the month of June, 2009, without actually staying at Nemam B.O. as per the daily movements, and without using his motor cycle for the journey; that while working as Assistant Superintendent of Posts, during the period from 27.02.2009 up to the date of issue of the charge memo, he failed to note down the time spent at Nemam B.O., examine the contents of B.O. bag received from A.O., and to comment on articles received in the B.O. bag; that during the same period, the Officer made a false mention in his inspection report about the distance between Nemam B.O. and Panduru B.O.; that during the said period, the Officer instructed the Inspector of Posts to bring letter boxes from two villages into unfixed beat system without actually assessing the traffic; that during the same period, the Officer directed the Office Assistant to submit a proposal for reduction of the post of G.D.S.M.C., Nemam B.O., and demanded and received an amount of Rs.10,000/- from Sri S.Venkatachalam, BPM, Nemam, for not pursuing the proposal; that during the same period, he issued a letter to the Post Masters of two Head Offices with a direction to take

necessary action for fixation of Time Related Continuity Allowance (TRCA) in respect of all Grameen Dak Sevak and pay the arrears of 40% without obtaining orders from the Superintendent of Post Offices; that during the period from 07.03.2003 to 05.09.2006, he issued a show-cause-notice to a mail carrier for taking disciplinary action, but dropped the same after taking a bribe of Rs.2,500/-; that during the same period, namely, 07.03.2003 to 05.09.2006, he issued a memo transferring the delivery area of two places from one Camp S.O. to another B.O. after taking a bribe of Rs.2,000/-; that during the period from 27.02.2009 up to the date of the charge memo, he demanded Rs.10,000/- towards bribe from one Branch Post Master to fix his TRCA at Rs.4,150/-; and that during the period from 07.03.2003 to 05.09.2006, he sent a proposal to the Superintendent of Post Offices, for bringing one branch office into forward mail arrangement by mentioning the distance wrongly.

6. In the light of the above allegations, let us now have a look at the Circular issued by the Department of Posts, dated 18.01.2005, for a better understanding of the contentions raised. The Circular, dated 18.01.2005, shows that originally, the vigilance cases of all Gazetted Officers of the Central Government and its equivalent in other Government Organizations were to be referred to the Central Vigilance Commission for advice. But, in the Office Order,

dated 16.04.2004, the Commission itself delegated their powers to the Central Government Ministries/Organizations with regard to vigilance cases of Gazetted Officers below Group 'A' of the Central Government i.e., the Officers of the level of Group 'B' Gazetted. But, at the same time, the CVC also stated that due to lack of appropriate expertise in the respective Departments, the Departments, if they come across any matter, which in their opinion, could not be handled properly, may be recommended for review to the CVC. Therefore, the Director of Vigilance in the Department of Posts appears to have issued the Circular, dated 18.01.2005, instructing all Heads of Circles and other concerned authorities that all the 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 of the Chief Vigilance Officer of the Department. The Chief Vigilance Officer, in turn, may advise for closure of the case or for initiation of major or minor penalty proceedings.

7. Paragraph Nos.2 to 6 of the Circular, dated 18.01.2005, may be usefully extracted as follows:

“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/Organizations with regard to vigilances 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 CVC 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 the other that the punishment awarded to these officers would commensurate to the gravity of the misconduct established on his part. The Commission has further noted that if they come across any matter, which in their opinion, has not been handled properly, it may recommend its review by the appropriate authority or may give such directions as it consider appropriate.*

4. *In view of above delegation and expectations of the CVC, all the Heads of Circles and other concerned authorities are hereby advised that all the 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 the recommendations 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.”

8. A careful perusal of the above would show that there is no mandate issued either by the CVC or by the Directorate of Posts, to get their prior approval before a charge memo is issued. Therefore, we do not know how, on the basis of the above Circular, the petitioner could contend that every charge memo has to be issued only with the approval of the Chief Vigilance Officer.

9. In any case, all the charges framed against the petitioner do not revolve around demand and acceptance of illegal gratification. Many of the charges relate to the procedural irregularities committed by him as well as the false claim made regarding a tour T.A. bill. Hence, the dismissal of the application by the Central Administrative Tribunal, does not appear to be wrong.

10. In its decision in *V. Vinod Kumar*, the Supreme Court was concerned with a case where the Rules require prior approval of the Central Government. But, in this case, no Rule requires the prior approval of the CVC.

11. In *B. V. Gopinath*, the Officer concerned was an All India Service Officer belonging to the Indian Revenue Service. It appears

that even the Rules require the prior approval of the Finance Minister, in respect of the All India service Offices. Therefore, Office Order No.205 of 2005 was invoked by the Supreme Court to come to a conclusion that prior approval for initiation of major penalty proceedings, may not tantamount to the same as granting prior approval for issuing a charge memo. Interestingly, there was no dispute in the case of **B. V. Gopinath** that prior approval of the Finance Minister was mandatory. The only question was whether prior approval was necessary before issuing a charge memo or it was sufficient just for the purpose of initiating disciplinary proceedings.

12. In the case on hand, the petitioner is not an All India Service Officer. Office Order No.205/2005, about which the Supreme Court was concerned in the case of **B. V. Gopinath**, does not apply to the petitioner.

13. It should be pointed out that the charge memo issued against the petitioner is under Rule 14 of the Central Civil Services (CCA) Rules, 1965. These Rules are issued by the Government, in exercise of the powers conferred by the proviso to Article 309 of the Constitution. These statutory Rules cannot be annulled or made subordinate to the Circular issued by the Director of Vigilance in the Department of Posts. Therefore, there is no case for warranting interference with the

issue of the charge memo. The charge memo was issued way back in 2010, and one way or the other, the proceedings have been stalled for the past six years. Therefore, we see no merit in the writ petition. Hence, it is dismissed.

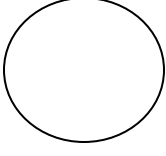
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

9th December, 2016
cbs





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