

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 06, 2021

+ W.P. (C) 2620/2021, CM APPL. 7766/2021

RAMAKANT DIXIT

..... Petitioner

Through: Mr. A.K. Bhardwaj and
Mr. Karan Gautam, Advs.

versus

**SECURITY PRINTING AND MINTING CORPORATION OF
INDIA LIMITED AND ORS.**

..... Respondents

Through: Mr. R.V. Sinha and Mr. A.S.
Singh, Advs. for R-1 & R-2
Mr. Ravinder Agarwal, Adv. for
CVC

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with
the following prayers:

*“In the premises of the above, it is respectfully
prayed that this Hon'ble High Court may be
pleased:-*

*(i) To issue a writ of mandamus commanding
the respondents to produce the entire record
pertaining to the reconsidered advice for*

initiation of disciplinary action against the petitioner, after the original advice for closing the matter including the File Reference No. SPMCIL/VIZ/72/ 18 and to issue a writ of certiorari quashing the reconsidered eve advice dated 17.12.2020 for initiation of disciplinary action against the petitioner.

(ii) To issue further writ of certiorari quashing and setting aside the Order No. SPMCIL/VIG/72/ 18(pt)/ 10978 dated 16.02.2021 and to Issue a writ of mandamus commanding the SPMCIL to withdraw its vitiated proposal received by eve on 27.02.2020.

(iii) To issue a writ of mandamus commanding the respondents to act upon the eve advice dated 11.12.2019.

(iv) To issue a writ of prohibition, prohibiting the respondents from initiating disciplinary proceedings against the petitioner in the matter' in which the eve had given its advice dated 11.12.2019 advising for closure of the proposal for initiating the proceedings qua the petitioner.

(v) To allow the writ petition with cost.

(vi) To pass such other and further order which their Lordships of this Hon'ble High Court deem fit and proper may please be passed."

2. In substance, the petitioner has challenged the advice tendered by the Central Vigilance Commission ('CVC', for short) on December 17, 2020 recommending initiation of disciplinary proceedings against the petitioner. The challenge is also to the rejection of the representation of the petitioner for reconsidering the advice and for not initiating disciplinary action against him and with a further direction to the respondent Nos.1 and 2 to

withdraw its proposal to the CVC dated February 27, 2020.

3. Some of the facts highlighted by Mr. A.K. Bhardwaj for deciding the issue, which falls for consideration, are, the petitioner had, on September 14, 2016 joined as General Manager, The Security Printing Press, Hyderabad. The printing section of the press generated an indent dated April 20, 2016 for procurement of Blue Wove Paper in reels for making of Inland Letter Cards in reel width 39 cms. The tender was processed for supply of the paper and after completion of all formalities, the order for supply was placed on M/s Sri Sant Kripa Paper Pvt. Ltd., Hyderabad, vide purchase order dated November 20, 2017. The firm supplied 90,193 Kg of paper on January 12, 2018. The printing section took the trial of 10,539.448 Kg of the supplied paper. Based on the run-ability trial conducted on the machine, out of 90,193 Kg of supplied quantity, 10,539.448 Kg was accepted and the remaining quantity, 79,653.552 Kg paper was rejected. The firm replaced the rejected quantity and supplied 80.110 Kg of paper as replacement for rejected quantity of 79,653.552 Kg of paper. It is noted that 80.110 Kg paper supplied by the firm as replacement was also rejected.

4. It is contended by Mr. Bhardwaj that the Tender Evaluation Committee ('TEC', for short) made the recommendation dated June 15, 2018 for; (i) Cancellation and Closure of the Purchase Order dated November 20, 2017 issued to the firm; (ii) Cancellation of contract for default and violation of the respondent No.1 Procurement Manual by the firm; (iii) Asking the firm to take back the rejected paper i.e. 72,437.25 Kg

within 15 days failing which demurrage charges as applicable should be recovered from the firm; (iv) Forfeiture of security deposit issued vide bank guarantee dated June 06, 2017 for an amount of Rs.9,73,000/-; (v) Issuance of show cause notice to the firm as to why it should not be blacklisted for its repeated deliberate attempt to pass off inferior goods and in short quantities.

5. It is submitted by Mr. Bhardwaj that as per procedure, the recommendation of TEC was sent to the Standing Committee of General Managers ('SCGM', for short) for approval. In the meeting, dated June 15, 2018, except the petitioner and Assistant Manager (F&A) / HOF, no other member of SCGM turned up to approve the recommendation of the TEC. Rather one Mr. Sudhir Sahu, General Manager (ISP, Nashik), who did not sign the minutes of the meeting of SCGM wrote a letter dated June 18, 2018 asking the petitioner to clarify, whether legal advice had been taken as per Procurement Manual to which the petitioner sent a letter dated June 19, 2018 stating that the press is in the process of seeking legal advice before proceeding further on the Proposal. A legal advice was sought regarding proposal for cancellation of contract and allied actions and not for giving any sort of opportunity to the firm to replace the rejected material. After the legal opinion was received, the Assistant Manager (Marketing) wrote a letter dated June 22, 2018 informing the General Manager, who are members of SCGM about the legal opinion.

6. It is the case of the petitioner that two General Managers

never questioned the legal opinion rendered by the legal Advisor. Thereafter the TEC comprising five members followed the legal opinion and recommended; (i) the firm may be given a final chance to replace the rejected material of 72,437.25 Kg.; (ii) Undertaking as advised by the law firm should be taken from the firm; (iii) Extension be given to the firm for replacement of the rejected paper by July 05, 2018 within the time limit of 15 days as suggested by the law firm; (iv) Communication to the SCGM regarding the outcome of the recommendation along with the TEC Report and treatment of the cancellation of contract as withdrawn.

7. It is submitted by Mr. Bhardwaj that the firm had time upto July 05, 2018 to replace the paper, but it sent a letter dated July 06, 2018, pleading Force Majeure because of heavy rain to unable to replace the paper and, sought extension of time by 15 days. He stated that normally, the TEC with the approval of General Manager could have extended the time, as per provisions contained in Procurement Manual of the paper press, but since the replacement was allowed in compliance of legal opinion, the TEC referred it to the law firm again for its advice that whether extension could be granted for the purpose of delivery. The firm opined that the time be granted upto July 20, 2018 to replace the paper. In terms of the legal advice, the TEC made the recommendation dated July 09, 2018, extending the time upto July 20, 2018. He stated that there was an application of mind and assessment of situation all along by the five-member of TEC and the role of the petitioner was only to approve TEC

recommendation. Thus, according to Mr. Bhardwaj, in the absence of their being any allegation against the members of the committee or Mr. Sudhir Sahu, or against the law firm, no allegation could have been made against the petitioner. Moreover, the entire decision given by the TEC was in public interest as also in the interest of Public Exchequer and there was no lapse far less any irregularity or violation of any procedure at all. He also referred to clause 3.3.2. of the Procurement Manual to contend that the entire analysis, assessment and consideration is at the end of TEC. It is TEC act to recommend action against the firm as also to recommend withdrawal of action and extension of time. The petitioner had only approved TEC decision and action. He also justified that the recommendation of TEC regarding extension of time was not sent to SCGM by referring upon clause 3.6.6. of Procurement Manual which stipulates that when the approval of next higher authority than CFA is required qua the recommendation for termination of contract, the same is not required for extension of delivery period. Thus, there was adherence to the procedure and the decision was not only in public interest but was also in the interest of public exchequer.

8. That apart, he stated that the CMD and CVO of the respondent Nos.1 and 2 were biased against the petitioner and they managed a pseudonymous complaint against the petitioner and sent the proposal to CVC for its advice for initiating the disciplinary action against the petitioner.

9. According to Mr. Bhardwaj, the CVC in its advice dated

December 11, 2019 advised the closure of the case. The respondent Nos.1 and 2 on February 27, 2020, sent a proposal for reconsideration of the advice dated December 11, 2019 of the CVC. In fact, the CMD and CVO made a presentation before the CVC to emphasize the proposal for reconsideration of CVC advice. Such presentation was in fact, the pressure put by the CMD / CVO on CVC to reconsider the advice. He stated that the advice has to be independent and should not be based on any presentation or pressure. The independent advice was for the closure of the case. The presentation by the disciplinary authority and the CVO for reconsideration of the advice by the CVC prove the bias of the disciplinary authority. Thus, not only the reconsidered advice, but also the proposal by the CMD of the respondent Nos.1 and 2 is vitiated and liable to be quashed.

10. According to Mr.Bhardwaj, the advice dated December 11, 2019 was reconsidered on December 17, 2020 after more than one year of the first stage advice and after 2 months and 16 days of the proposal for reconsideration. As per the prior order of the Vigilance Manual 2017, the advice of the CVC could be reconsidered only within one month and not thereafter. Even as per Circular dated April 24, 2008 the CVC could reconsider its advice only within two months and not thereafter. In a recent circular dated August 06, 2020, the CVC makes it clear that CVC can reconsider its advice only within one month and that too only in those exceptional individual cases having additional new facts. Also, on September 09, 2020, the CVC issued Office Order making it clear that no proposal for reconsideration of the

Commission's advice would be entertained after 30 days. Thus, in terms of the aforesaid orders read with Vigilance Manual, the CVC advice dated December 17, 2020 is impermissible and is vitiated and as such liable to be quashed.

11. According to Mr. Bhardwaj, even a pseudonymous complaint could not have been acted upon. In this regard, he has relied upon a circular dated March 07, 2016 of the CVC. According to him, the stand of the respondents that a pseudonymous complaint could be treated as a source information is also untenable. A source information is such information which is received verbally from an identifiable source, to be reduced in writing, which is not the case here. In the end, he reiterates that when there was no advice to take action against any of the members of the TEC, such advice qua the petitioner is discriminatory and violative of Article 14 and 16 of the Constitution of India. He relied upon the judgment of the Supreme Court in *Man Singh v. State of Haryana & Anr., Appeal (Civil No.3186/2008)* decided on May 01, 2008; *Rajender Yadav v. State of M.P. & Anr. (Civil Appeal No.1334/2013)*, decided on February 13, 2013, wherein the Supreme Court has held that those involved in the same incident cannot be treated differently. Thus, according to him, the advice by the CVC to take action against the petitioner alone is violative of Article 14 and 16 of the Constitution of India.

12. He also relied upon the judgment of the Supreme Court in *T.C. Jindgar v. Rural Electrification Corporation W.P.(C) 4790/2002* decided on April 24, 2008 to state that the aforesaid

conduct of the petitioner cannot constitute misconduct and also on the Judgment of this Court in *Virendra Singh Chankot v. UOI & Ors.* 2019 SCC Online Delhi 11498 to contend that the prejudice arise from the delay itself. He also referred to the judgment of the Supreme Court in *P. V. Mahadevan v. M.D., T.N. Housing Board* (2005) 6 SCC 636, in support of his submission that the disciplinary action initiated to affect the promotion has to be presumed an action causing prejudice to the employee concerned.

13. He also relied upon the judgment of the Supreme Court in *Nagraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & And.* (1991) 3 SCC 219, in support of his submission when the advice of CVC even when not suffering from any technical defect is not binding on the disciplinary authority. He also relied upon the judgment reported as 2009 SCC Online Del 1881 in the case of *Union of India and Ors. v. Vineet Ohri W.P.(C) 7914/2009* in support of his submission that the tribunal / Court could interfere in a disciplinary matter at the interlocutory stage. He also relied upon the judgment in *State of Punjab v. V.K. Khanna & Ors.*, (2001) 2 SCC 330, wherein the Supreme Court ruled that it is equally well settled that in the event there is motive involved in the matter and the authority concerned is biased, then interference in such matter is necessary.

14. He also relied upon the judgment in *Central Vigilance Commission v. Shri Anand Darbari*, wherein the High Court observed that the CVC need to be fair. He also referred to the judgment in the case of *Wall Mart India Pvt. Ltd. v. CVC*,

W.P.(C) 3044/2016, decided on September 04, 2018, wherein this Court has quashed the inquiry started by the CVC on the basis of newspaper report. He seeks the grant of the prayers as made in the petition.

15. On the other hand, Mr.Ravinder Agarwal, learned counsel appearing for the respondent No.3 CVC would submit that as per Section 8(1)(g) of the CVC Act, 2003, the Commission has the mandate to tender advice to the Central Government, Corporations established by or under any central Act, government companies, societies and local authorities owned or controlled by the Central Government, regarding the Officers covered under its advisory jurisdiction, as defined under Section 8(2) of the Act.

16. According to Mr.Agarwal, even in the case where a charge-sheet is issued, the Supreme Court in catena of judgments has repeatedly held that in exercise of writ jurisdiction the Courts should not ordinarily interfere. (Ref: **Union of India and Anr. v. Kunisetty Satyanarayana, (2006) 12 SCC 28** and **Sectreary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha, (2012) 11 SCC 565**).

17. According to Mr.Agarwal, in the present case, the petitioner has not been issued charge-sheet yet. Thus, according to him, there is no cause of action in favour of the petitioner for filing the instant writ petition.

18. Insofar as the submission made by Mr. Bhardwaj that the advice tendered by the CVC could not have been re-considered on account of delay is concerned, he stated that the same is untenable as the circular (s) contemplate re-consideration, in

certain circumstance. It is clear that when the proposal was submitted by the respondent No.1 for reconsideration of advice, circular dated April 24, 2008 was in operation. The said circular makes it clear that the time limit of two months for the reconsideration of advice is merely directory and not mandatory.

19. According to Mr. Agarwal, the Commission, may in its discretion entertain a proposal for reconsideration of their advice, even after the expiry of the stipulated period of two months. In the present case the initial advice was tendered by the Commissioner on December 11, 2019, whereas a proposal for reconsideration dated February 20, 2020, was received by the Commission on February 27, 2020. In the proposal for reconsideration of advice, the respondent No.1 was able to bring on record additional facts, warranting reconsideration by the CVC of its earlier advice.

20. Further, vide OM dated May 17, 2019, the CVC recommended initiation of major penalty proceedings against five officers and as against the petitioner, the Commission sought further clarifications. The respondent Nos.1 and 2 vide letter dated August 09, 2019 submitted their clarifications, which was followed by the meeting of the CVO, and Additional Secretary, CVC on November 11, 2019. In the said meeting further clarifications were sought by the CVC. Since, no further information was received from respondent No.1, the CVC advised closure of case against the petitioner. That vide letter dated December 12, 2019, the respondent Nos.1 and 2 furnished further clarifications, as sought by the CVC during the meeting of

the CVO with Additional Secretary, CVC on November 11, 2019. However, since the first stage advice had already been rendered, the respondent No.1 vide its letter dated February 20, 2020, requested the Commission to reconsider its advice by relying upon additional facts / information as contained in letter dated December 12, 2019.

21. Mr. Agarwal has laid stress on the fact that in the said letter dated December 12, 2019, it was *inter alia* pointed out by the CVO, that on the issue of termination of contract and other consequential action, Standing Committee of General Manager had sought a legal opinion in compliance with the Procurement Manual. However, legal opinion was not given on the said issue. Instead, the law firm gave their opinion on the following issue *“Whether the supplier can be given an opportunity and permitted him to replace the rejected material as requested by the supplier vide his letter dated June 14, 2018.”*

22. The inquiry by CVO revealed that the basis of the aforesaid legal opinion was an email dated June 20, 2018, which was not available in the official record. The said email was also found to be deleted from the mail server, and could be retrieved only with the help of IT experts.

23. He also lay stress on the fact that during the course of inquiry by the CVO, the author of the email dated June 20, 2018 was asked to provide the copy of the note sheet where the approval of the competent authority was obtained. In reply thereto, Assistant Manager (Marketing), stated that the email was written after discussing with the petitioner. He further submitted

that since the legal opinion was sought by the Standing Committee of General Managers in the ordinary course, the same should have been placed before the said Committee for an appropriate view on the issue. However, the matter was not placed before SCGM, and instead it was placed before the TEC, which is a lower authority, and at the relevant time headed by the petitioner himself. The TEC accepted the legal advice and granted further extension to the defaulting firm. Despite extension, the firm could not able to deliver the required consignment. Again the matter was referred to the legal firm for opinion at the behest of TEC. The CVO of respondent No.1, on the basis of the aforesaid acts of omission and commission on the part of the petitioner, concluded that the petitioner took all efforts to benefit the supplier. So, according to Mr. Agarwal, the reconsideration of the advice by the CVC cannot be faulted and the present petition is liable to be dismissed.

24. Mr. R.V. Sinha, learned counsel appearing for the respondent Nos.1 and 2 would submit that the reconsideration of advice being in terms of circular / order issued by the CVC which are administrative instruction without any statutory colour, could have been given. In this regard, he has relied upon the judgment of the Supreme Court in ***J.R. Raghupathy, Etc. v. State of A.P. & Ors. Etc., 1988 AIR 1681, Chief Commercial Manager, South Central Railway, Secunderabad and Ors. v. G. Ratnam and Ors.,*** and other connected matters, ***(2007) 8 SCC 212***. He also relied upon the judgment of the Supreme Court on similar proposition in ***Modern School v. Shashi Pal Sharma and Ors.,***

(2007) 8 SCC 540. He seeks the dismissal of the writ petition.

25. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the CVC, respondent No.3 could have reconsidered its advice dated December 11, 2019 (whereby the CVC advised the closure of the case against the petitioner) and stated initiation of disciplinary proceedings against the petitioner.

26. To answer this issue, it is necessary to briefly refer to the circulars issued by the CVC. The first circular is dated March 6, 2000 followed by circular dated April 24, 2008. I may state here that Mr. Bhardwaj has also referred to a circular dated August, 6, 2020 which was issued after the proposal of reconsideration was sent by respondent No. 1 to CVC on February 20, 2020. So, the case in hand has to be seen keeping in view the circulars dated March 6, 2000 and April 24, 2008. I may reproduce here the circular dated April 24, 2008 issued by the CVC as under:

“Sub:-Reference to the Commission for reconsideration of its advice - regarding

The Commission has expressed serious concern about receiving repeated requests for the reconsideration of its advice that give the impression of being routine in nature. The present instructions contained in para 5.16, Chapter I of Vigilance Manual, Vol. I provide that where the department propose to take a lenient view or stricter view than that recommended by the Commission, consultation with the CVC is necessary. The departments, therefore, are required to approach the Commission for advice in such cases before a final decision is taken. It has also been stated that the reference for reconsideration of the Commission's advice should be made only once. Subsequently it was instructed vide letter No.000/DSP/1 dated 6.3.2000 that reconsideration proposals should be sent within a

period of two months from the date of receipt of the Commission's advice. It has been observed that the proposals for reconsideration of the Commission's advice are not sent within the stipulated time. Further, justification warranting reconsideration is also not given.

2. In view of the position stated above, the Commission has reviewed its instructions in the matter. The Commission's advice is based on the inputs received from the organization and where the Commission has taken a view different from the one proposed by the organization, it is on account of the Commission's perception of the seriousness of the lapses or otherwise. In such cases, there is no scope for reconsideration. The Commission has, therefore, decided that no proposal for reconsideration of the Commission's advice would be entertained unless new additional facts have come to light which would have the effect of altering the seriousness of the allegations/charges leveled against an officer. Such new facts should be substantiated by adequate evidence and should also be explained as to why the evidence was not considered earlier, while approaching the Commission for its advice. The proposals for reconsideration of the advices, if warranted, should be submitted at the earliest but within two months of receipt of the Commission's advice. The proposals should be submitted by the disciplinary authority or it should clearly indicate that the proposal has the approval of the disciplinary authority.

3. The above instructions may be noted for strict compliance.”

27. From the above, it is noted that the proposal for reconsideration of advice would be entertained only when new additional facts have come to light, which would have the affect of altering seriousness of the allegations / charges, levelled against an officer. It also reveals that the proposal has to be submitted within two months of the commission's earlier advice.

28. The facts as narrated above show that in the meeting held on November 11, 2019 certain clarifications were sought for by the CVC from the CVO of respondent No.1, but before the clarifications could be given, on December 12, 2019, the CVC had already given its advice on December 11, 2019. As the clarifications could not be considered, a proposal was sent on February 20, 2020 by the respondent No.1, i.e., after 9 days beyond 2 months period for reconsideration of the earlier advice.

29. The CVC on consideration of the clarifications had reconsidered its opinion and advised initiation of disciplinary proceedings against the petitioner.

30. The plea of Mr. Bhardwaj is that this proposal of reconsideration could not have been sent after one month of the initial advice by relying on circular dated August 6, 2020 by the CVC.

31. As stated above, it is the circular dated April 24, 2008 which will be applicable in this case. In any case, the circulars issued by the CVC are not in exercise of its power under Section 21, CVC Act to make regulations nor there is any provision in the Act which stipulates a time period for the CVC to reconsider its advice. The circulars are in the nature of guidelines only to ensure a proposal for reconsideration for good valid reason is sent at the earliest. In fact, in the circular dated August 6, 2020, period has been reduced from two months to one month, but the wording in Para 4 of the circular dated August 6, 2020, which reads as under shows the presence of the word 'may' makes the circular directory:

“4. The above instructions and time lines for sending reconsideration proposals of Commission's first stage advice may be strictly adhered to in future.”

32. Mr. Aggarwal is right in stating that these circulars are directory and not mandatory. I may in this regard appropriately refer to the judgment of the Supreme Court referred by Mr. Sinha in the case of **Chief Commercial Manager, South Central Railway (supra)** wherein the Court has in Paras 19 and 20 held as under:

“19. We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance Organisation and its role, Central Vigilance Commission, Central Bureau of Investigation, investigation of complaints by Railway Vigilance, processing of vigilance cases in Railway Board, suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work, etc. Paras 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to

disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

20. It is well settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution of India.”

33. Having said that the issue can be looked at from another perspective, that, it is a settled law of the Supreme Court in terms of the Judgment in the case of ***Union of India v. Alok Kumar (2010) 5 SCC 349*** that unless rules states, the advice of the CVC is not binding. The Supreme Court in Para 54 has held as under:

“54. In the present case, firstly, no such rule has been brought to our notice and secondly, there is nothing on record to show that the alleged notes of the CVC were actually taken into consideration and the same effected or tainted the findings or mind of the authority while passing the orders of punishment. Thus, in our view, the findings of the Tribunal cannot be sustained in law. Unless the Rules so require, advice of the CVC is not binding. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In absence of any specific rule, that seeking advice and implementing

thereof is mandatory, it will not be just and proper to presume that there is prejudice to the concerned officer. Even in the cases where the action is taken without consulting the Vigilance Commission, it necessarily will not vitiate the order of removal passed after inquiry by the departmental authority. Reference in this regard can also be made to the judgment of this Court in the cases of State of A.P. and Anr. v. Dr. Rahimuddin Kamal MANU/SC/0209/1997 : 1997 (3) SCC 505 and Deokinandan Prasad v. State of Bihar MANU/SC/0658/1971 : 1971 (2) SCC 330. In the case of Dr. Rahimuddin Kamal (supra), this Court was concerned with Rule 4(2) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961, where the expression 'shall' had been used in the Rules, making it obligatory upon the part of the Government, which required it to examine the records and after consulting the Head of the Department, pass an appropriate order. But before taking a decision, the Government shall consult the Vigilance Commission. In that case the order of removal from service was passed in accordance with law and after conducting appropriate inquiry but without consulting the Commission. The Court expressed the view that the expression 'shall' had to be construed as 'may' and non consultation with the Commission would not render the order illegal or ineffective. In view of the larger Bench judgment and particularly, with reference to the facts of the present case, we are unable to accept the contention of the respondents before us. ”

(emphasis supplied)

34. So it follows, the CVC's advice being not binding, even on account of its earlier advice dated December 11, 2019 or advice on reconsideration dated December 17, 2020, the disciplinary authority has to apply its mind on the material / advice to take a decision to hold the disciplinary proceedings against the petitioner. As of today, there is no decision of the disciplinary authority to issue a chargesheet to the petitioner. If

that be so, Mr. Aggarwal is right to contend that there is no cause of action for the petitioner to file this petition. In fact, I find the petitioner himself has referred to the Judgment of the Supreme Court in the case of *Nagraj Shivarao Karjagi (supra)* to contend that the advice of the CVC is not binding. If that be so, the petitioner could not have filed this petition with the prayers that have been reproduced above, which includes closing the matter in favour of the petitioner; quashing advice of CVC dated December 17, 2020 as it is for the disciplinary authority after applying its mind to take a decision whether to issue charge sheet or not.

35. The plea of Mr. Bhardwaj that a pseudonymous complaint could not have been acted upon in view of the circular dated March 7, 2016 of the CVC is concerned, the same is also not appealing. It is the stand of the respondent Nos. 1 and 2 that the information is a source information based on e-mail dated June 15, 2008, which is received from an identifiable source to be reduced in writing. If that be so, to say that the complaint being a pseudonymous or an anonymous and cannot be acted upon is not tenable. Again, it is for the disciplinary authority to look into the facts of the case before taking a decision whether issuance of chargesheet is called for or not. Surely, the disciplinary authority shall form its opinion based on the evidence on record. Further, the very CVC which issued the circular dated March 7, 2016 has not raised any objection in that regard. This plea of Mr. Bhardwaj is rejected.

36. In so far as the plea of Mr. Bhardwaj that it is only against the petitioner that the CVC had advised initiation of

disciplinary proceedings and not against the members of the TEC who had made recommendations, which were approved by the petitioner as discriminatory is concerned, the same is also not appealing as there is no decision by the disciplinary authority to issue a chargesheet to the petitioner as of today. I also find from the record that the CVC has also advised initiation of major penalty proceedings against 5 officers of respondent No.1. So it is not a case where advice of the CVC is confined to the petitioner. The decision to initiate disciplinary proceedings shall surely be based on the subjective satisfaction of the disciplinary authority.

37. In so far as the reliance placed by Mr. Bhardwaj on the Judgments of *Man Singh (supra)* and *Rajender Yadav (supra)* in support of his plea that persons involved in the same incident cannot be treated differently, has no applicability in the facts of this case, more so, in view of my conclusion above.

38. In so far as the Judgment in the case *T.C. Jindgar (supra)* is concerned, Mr. Bhardwaj has relied upon the same to contend that the conduct of the petitioner cannot be construed as a misconduct. The said Judgment is distinguishable on facts and has no applicability. In so far as the Judgments relied upon by Mr. Bhardwaj in the cases of *Virendra Singh Chankot (supra)* and *P.V. Mahadevan (supra)* are concerned, suffice to state that such a plea is pre-mature as no decision has been taken by the disciplinary authority to initiate departmental enquiry against the petitioner. I have already held, the instructions issued by the CVC are directory in nature. Respondent No. 1 has sent its

proposal for reconsideration of its earlier advice by the CVC within 9 days over and above 2 months and the delay is not abnormal. Similarly, the Judgment in the case of *Nagraj Shivarao Karjagi (supra)* shall not help the case of the petitioner as the Supreme Court has clearly held that the advice of the CVC is not binding on the disciplinary authority. In so far as the Judgment in the case of *Vineet Ohri (supra)* is concerned, no case has been made out by the petitioner for this Court to interfere in the process of initiating the departmental proceedings at this stage, more so no decision is yet taken in that regard. The Judgment of *V.K. Khanna (supra)* has no applicability, more so in the absence of disciplinary authority being party in person. The Judgment of *Shri Anand Darbari (supra)* has no applicability in the facts of this case. Similarly, the Judgment in the case of *Wall Mart India Pvt. Ltd. (supra)* has no applicability in the facts of this case as it is the case of the respondent No. 1 that the action has been initiated against the petitioner based on a source information.

39. In view of my discussion above, I do not see any merit in the petition. The same is dismissed.

CM APPL. 7766/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 06, 2021/aky/jg