

Nagaraj Shivarao Karjagi

Vs

Syndicate Bank Head Office, Manipal and another

Civil Appeal No. 2123 of 1991. (Arising out of S.L.P. (Civil) No. 4415 of 1989) with Writ Petition (Civil) No. 1287 of 1989

(K. Jagannatha Shetty, Yogeshwar Dayal JJ)

30.04.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. Nagaraj Shivarao Kajagi, the petitioner in SLP No. 4415 of 1989 has challenged his compulsory retirement and in Writ Petition No. 1287 of 1989 he has questioned the validity of the direction dated 21 July 1984 issued by the Finance Ministry, Government of India. Since the questions raised in both the cases are interlocked, we grant special leave in the S LP and proceed to dispose of the same along with the writ petition.

2. The events leading to these cases may briefly be stated. In 1982, the petitioner was a Manager of the Syndicate Bank ('the Bank, at East Patel Nagar Branch at New Delhi. He discounted a cheque of the sum of Rupees 50,000/- drawn on Punjab National Bank, Madras, after obtaining, by phone prior approval of the Regional Divisional Manager of the Bank. The cheque was sent for realisation to the Punjab National Bank at Madras, but it was returned unpaid. The petitioner did not take prompt action to recover the amount from the person in whose favour he discounted the cheque. He kept the cheque with him even without reporting, to the higher authorities. In 1983, the Assistant General Manager of the Bank called upon him to explain why the amount due under the discounted cheque has not been recovered. The petitioner in his reply explained the circumstances under which the cheque was discounted. He has stated that the credit was given to the account of one Dr. N. Ramakrishnan who was a Senior Scientist in Indian Agricultural Research Institute, New Delhi but the amount was withdrawn by another person called A.. Chandrashekhar who is an officer of the Bank. He has further stated that A. Chandrashekhar has promised to pay the amount and, therefore, he has retained the instrument with him hoping that A. Chandrashekhar would keep up his promise. On 6 July 1984 a sum of Rs. 52,167. 15 was deposited with the Bank. A sum of Rs. 36,000/ - towards principal sum and Rs. 16,167. 15 towards interest. A suit was filed to recover a sum of Rs. 14,000/- out of the principal amount. And later on, this principal amount was also recovered and credited to the Bank.

3. However, in 1985 there was a departmental inquiry against the petitioner. The Commissioner for Vigilance Inquiry from the Central Vigilance Commission conducted the inquiry. The first charge against the petitioner was that when he was functioning as Manager, he discounted under his discretionary jurisdiction a cheque for Rs. 50,000/ drawn in the name of Dr. N. Ramakrishnan in order to accommodate A. Chandrashekhar an officer of the Bank or others known to him. The second charge framed against him, related to the retention of the discounted instrument with him from December, 1982 till January 1984 without taking/causing to be taken any action to realise the

amount due under the unpaid cheque. It was also alleged that the petitioner made available undue financial accommodation to A. Chandrashekhar or others to the detriment of the interests of the Bank. He was charged with lack of integrity, honesty devotion to duty, diligence and conduct unbecoming of the status of a Bank Officer in contravention of Regulation No. 3(1) of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976.

4. The inquiry was held as per the procedure prescribed by Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976, ('the Regulations'). On 16th October 1986, the Inquiry Officer submitted his report holding that the charges were proved against the petitioner. He has held that the petitioner has failed to take any effective steps for recovery of the amount paid under the discounted instrument. He has kept the instrument with himself for unduly long period without even surrendering the same to the custody of the Bank. It was only after the Additional General Manager reminded him by letter dated 15 December 1983, the petitioner assured him that he would return the cheque which he finally did on 18 January 1984. The Inquiry Officer has finally concluded that the transaction connected with the unpaid instrument was of an accommodative nature with a view to assist A. Chandrashekhar by using another person as benami and it was in clear violation of the rules of the Bank.

5. It is said and indeed not disputed that the Bank referred the matter to the Central Vigilance Commission for advice and the Commission has recommended that the petitioner may be compulsorily retired from service by way of punishment.

6. The disciplinary authority after considering the inquiry report and affording an opportunity to the petitioner passed an order dated 7 October 1987 imposing on the petitioner the penalty of compulsorily retirement. The petitioner appealed to the General Manager challenging the punishment. On 27 August 1988 the General Manager dismissed the appeal concurring with the findings recorded and the punishment imposed by the disciplinary authority. The petitioner thereupon moved the Bombay High Court for relief under Art. 226. of the Constitution. The High Court has also dismissed the writ petition. He has now appealed to this Court.

#### THE CONTENTIONS OF THE PETITIONER

7. The petitioner has been complaining throughout and also before us that the punishing authorities did not apply their mind and did not exercise their power in considering the merits of his case. They have imposed on him the penalty of compulsory retirement in obedience to the advice of the Central Vigilance Commission which has been made binding on them by the direction dated 21 July 1984 issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). They have blindly followed the advice given by the Central Vigilance Commission without regard to the merits of the matter and contrary to the statutory Regulations governing the departmental inquiries. The subject matter of inquiry was only regarding irregularities in the banking practice and the action complained of has not affected the interests of the Bank. The petitioner by his own efforts has recovered the money due under the discounted cheque and credited the same with interest to the Bank. The findings recorded by the Inquiry Officer on the alleged misdemeanour does not warrant any major penalty like the compulsory retirement. Reference was also made to certain representations said to have been made by the Bank to the Central Vigilance Commission for approval to impose a lesser punishment. It is said that the Bank pleaded in the representations that the punishment of compulsory retirement advised by the Commission was too harsh.

#### SYNDICATE BANK OFFICER EMPLOYEES (DISCIPLINE AND APPEAL) REGULATIONS

8. These Regulations have been framed under Sec. 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. They were framed by the Board of Directors of the Syndicate Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government. Regulation 4 prescribes penalties for acts of misconduct. Regulation 5 specifies the authority to institute disciplinary proceedings and impose penalties. Regulation 6 lays down procedure for imposing major penalties and Regulation 7 provides for action on the inquiry report. Regulation 7 confers power to the disciplinary authority either to agree or disagree with the findings of the inquiry authority on any article of charge. The disciplinary authority may reach its own conclusion on the material on record and impose any penalty prescribed under Regulation 4. Or if it is of the opinion that no penalty should be imposed on the delinquent officer, it may pass an order exonerating the delinquent officer. Regulation 17 provides for appeals against the order imposing any of the penalties specified in Regulation 4. The appellate authority has been given the power to pass any order of penalty or remitting the case to the disciplinary authority or to any other authority for fresh disposal. Regulation 19 provides for consultation with the Central Vigilance Commission. It states that "the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle." There is no other Regulation requiring consultation with Central Vigilance Commission, or providing that the advice given by the Commission is binding on the punishing authorities.

9. The Central Vigilance Commission, however, appears to have framed guidelines for Banks to consult the Commission in respect of cases where major penalty is prescribed under the Regulation. Article 22 of the Central Vigilance Commission Manual reads:

"The Scheme of consultation with the Commission in respect of major penalty cases pertaining to such officers envisages consultation with the Commission at two stages. The first stage of consultation arises when initiating disciplinary proceedings while the second consultation is taken at the conclusion of the proceedings."

Article 23.2 of the C. V. C. Manual Chapter 10 reads:

"In all the cases where C.V.C. advises initiation of major penalty proceedings, it also nominates simultaneously a Commissioner for Departmental Inquiries to whom the inquiry should be entrusted."

THE DIRECTION OF THE MINISTRY OF FINANCE, DEPARTMENT OF ECONOMIC AFFAIRS (BANKING DIVISION)

10. On 21 July 1984 Joint Secretary, Ministry of Finance, Department of Economic Affairs (Banking Division) has written a letter to all Banking Institutions thus.:

"Recently a case has been reported where a bank has revised the punishment awarded to an officer in a disciplinary case contrary to the advice of the Central Vigilance Commission. The case has figured in the Annual Report of the CVC as a case of non-consultation with the Commission and thus created an embarrassing situation. You will, perhaps, be aware of the Annual Reports of the CVC, which contain cases where the disciplinary authorities had not accepted its recommendations or had not consulted it, are laid on the Tables of both the Houses of Parliament. This may

thereafter be discussed in the Parliament also. You will agree that under no circumstances the advice of the CVC should be modified except with the prior concurrence of the commission and this Ministry. I may mention here that revision of the penalty imposed on a delinquent officer as a result of an appeal filed by him before the appellate authority against the decision of the original disciplinary authority also amounts to non-consultation / non-acceptance of the advice of the CVC and is included in CVC's Annual Report.

Kindly circulate these instructions to the concerned officers in Your bank for strict compliance. The receipt of this D.O. letter may please be acknowledged. A copy of this D. O. letter is being marked to CVO in your bank separately."

#### CIRCULARS OF THE BANK

11. On 27 July 1984, A Krishna Rao, Chairman and Managing Director of the Bank, issued a circular to all branches of the Bank as follows:

"I am enclosing herewith a photostat copy of the DO letter No. 41/3/84-Vig. dated 21-7-1984 received by me from Shri Ashok Kumar, Joint Secretary, Ministry of Finance, Department of economic Affairs (Banking Division), Vigilance Cell, New Delhi, in the above connection for strict compliance of the instructions contained therein.

As the advice in vigilance cases received from Central Vigilance Commission is communicated to the authorities concerned by the Chief Vigilance Officer. I advise, that the Chief Vigilance Officer's advice, as explained in my above referred to D.O letter. should be complied with.

Even when a revision of the penalty imposed on a delinquent officer at the advice of the Chief Vigilance Officer by the Original Disciplinary Authority were to be considered as a result of an appeal filed by him before the appellate higher authorities, such revision shall be effected only after consulting the Chief Vigilance Officer.

Please acknowledge receipt of this and ensure compliance of the instructions contained herein."

12. On 8 September 1986 P.S.V.Maliva. the succeeding Chairman and Managing Director of the Bank issued another circular letter to all branches of the bank in the following terms:

"All vigilance cases in the Bank are being investigate & diprocessed at Vigilance Cell at the HO, under the administrative control of the Chief Vigilance Officer, who is reporting directly to me. After processing of the reports is concluded, the cases are referred to Central Vigilance Commission as pey the existing procedure and the advice received from the commission is being communicated to the Disciplinary:Appellate Authorities by the Chief Vigilance Officer.

If the advice tendered by the Commission is not accepted acted upon, it will amount to non-acceptance of the advice of the Commission and such instance will figure in the Annual Report of the Central Vigilance Commission placed before the Parliament.

This apart the non-acceptance of the advice in vigilance cases is likely to lead to a

situation, in which, different types of decisions are possible to be taken in similar cases, which is sure to result in a voidable complications and injustice to certain sections of the Officers' employees community. Again in such a situation, ensuring uniform standards in finalising action on vigilance cases will also become a very difficult phenomenon, which is not a desirable trend and does not augur well for the healthy functioning of the vigilance machinery in the Bank.

I therefore, advise all Disciplinary Appellate Authorities to see that they refer as hitherto all vigilance cases to Chief Vigilance Officer and consult him on such cases and act upon his advice.

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If for any reasons, the authorities concerned feel that the advice needs to be reconsidered or a departure is called for, they may refer back the matter to Chief Vigilance Officer for reconsideration of the advice with the reasons for such disagreement and the Chief Vigilance Officer will see whether and to what extent such reconsideration is desirable or feasible and will tender advice again on reconsideration.

If the authority concerned is still not disposed to act on the advice, the disinclination on the part of the authority concerned will have to be brought to my notice and the advice given by me in respect of such cases shall be treated as final. It is also necessary that the authorities concerned should for obvious reasons keep the advice in strict confidence and see that no reference thereof is made in any of the correspondence communication, whatever emanating from their end."

13. The petitioner being aware of the directions of the Ministry of Finance and the circulars issued by the Bank has in his memo of appeal before the appellate authority, inter alia, complained that the system and procedure adopted by the Bank in dealing with vigilance cases is totally against the principles of natural justice. The Bank has no control over such cases. The Disciplinary Authority and Appellate Authority are required to carry into effect the punishment advised by the Central Vigilance Commission without change. He has also pointed out that his appeal could be nothing but an empty formality as the appellate authority would be also bound by the decision of the Central Vigilance Commission. The petitioner has also added post script to his appeal Memo stating thus "This appeal has been filed without prejudice to my contention that this appeal is an exercise in futility as the appellate authority also is not the deciding authority and this appeal also will be decided by the CVOCVC, who has already decided and whose decision is binding on you. There is in fact no effective right of appeal."

14. Counsel for the Bank, however, submits that notwithstanding the advice of the Central Vigilance Commission and the directive dated 21 July 1984 of the Ministry of Finance, Department of Economic Affairs (Banking Division), the case of the petitioner has received the fullest consideration from the disciplinary and appellate authorities. They have independently considered the material on record both on the articles of charges and also on the appropriate punishment of compulsory retirement imposed on the petitioner. The orders of the authorities do not refer to the circulars of the Bank, nor to the punishment proposed by the Central Vigilance Commission. It is, therefore, illegitimate to contend that the punishment imposed on the petitioner has been vitiated by extraneous influences.

15. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt as alleged by the petitioner and not denied by the Bank in its counter that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advise lesser punishment to the petitioner. Apparently, those representations were not accepted by the Commission. The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed, they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.

16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context reference may be made to Art. 320(3) of the Constitution. The Art. 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted - on all disciplinary, matters affecting a civil servant including memorials or petitions relating to such matters. This Court in *A. N. D'Silva v. Union of India* ((1962) Suppl.(1)(SCR) 968) has expressed the view that the commission's function is purely advisor. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the

Central Vigilance Commission.

18. Secondly, the Ministry of Finance, Government of India has no jurisdiction to issue the impugned directive to Banking institutions. The Government may regulate the Banking institutions within the power located under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. So far as we could see, Section 8 is the only provision which empowers to the Government to issue directions. Section 8 reads:

"Every corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give."

19. The corresponding new bank referred to in S. 8 has been defined under S. 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters.

20. For the foregoing reasons, we allow the appeal and the writ petition quashing the directive issued by the Finance Ministry, Department of Economic Affairs (Banking Division) dated 21 July, 1984. We also issue a direction to the Chairman of the Syndicate Bank to withdraw the circular letters dated 27 July, 1984 and 8 September 1986. We further set aside the impugned orders of the disciplinary authority and appellate authority, with a direction to the former to dispose of the petitioner's case in accordance with law and in the light of the observations made.

21. The petitioner is entitled to costs which we quantify in both the cases at Rs. 15,000/- which shall be paid by the Central Government.

Order accordingly.

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