

A.M. Kulshrestha Vs. Union Bank of India and Ors.

Civil Appeal No. 7039 of 2025 arising out of SLP (C) No. 26933 of 2019 · Supreme Court of India · 2025-05-20 · Abhay S. Oka · Augustine George Masih · F2J-C-1428

Full judgment text

A.M. Kulshrestha Vs. Union Bank of India and Ors.

[Civil Appeal No. 7039 of 2025 arising out of SLP (C) No. 26933 of 2019]

Abhay S. Oka, J.

Leave granted.

1. This appeal is directed against the judgment and order dated 20th September, 2019 passed by the Division Bench of the High Court of Allahabad affirming the order of the Learned Single Judge dated 26th July, 2019, whereby the Writ Petition preferred by the appellant seeking quashing of the charge sheet served on him pursuant to disciplinary proceedings was dismissed.

FACTUAL ASPECTS

2. The appellant was an employee of the Union Bank of India (hereinafter referred to as "The Respondent Bank"), where he served for approximately 34 years from 1984 to 2018. He was promoted to the post of Deputy General Manager in 2016 and was due to retire on 30th June, 2019.

3. The Respondent Bank vide order dated 21st August, 2018, suspended the appellant pending further disciplinary action, alleging that the appellant, in his prior role as the Regional Head, Meerut, had adopted a very casual approach while sanctioning credit proposals in 16 accounts submitted by Mid-corporate Ghaziabad Branch. It was alleged that he sanctioned huge limits to newly incorporated firms without ensuring proper due diligence by the branch or processing officers.

On 18th January, 2019, after approximately 6 months of the suspension order, a show cause notice was issued to the appellant, asking him to show cause as to why disciplinary action should not be initiated against him. On 27th March, 2019, another show cause notice was issued to the appellant incorporating the same omissions and commissions as alleged in the previous show cause notice, but in relation to other parties. The appellant made multiple representations to the Respondent Bank, requesting it to revoke his suspension. However, the same was of no avail.

4. The appellant preferred Civil Misc. Writ Petition No. 6976 of 2019 before the Hon'ble High Court of Allahabad against Order dated 21st August, 2018. The General Manager of the Respondent Bank (hereinafter referred to as, "General Manager") submitted personal affidavit dated 23rd May, 2019 before the Hon'ble High Court justifying the delay in issuing the charge sheet as attributable to the matter being referred to the Central Vigilance Commission (hereinafter referred to as, "the CVC") in terms of Regulation 19 of the Union of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as, "1976 Regulations"). The relevant extract of the General Manager's affidavit is as follows:

"32. That, the IAC has viewed/regarded the case of 16 officials, including that of appellant, as a Vigilance case.

33. That since the appellant being an Executive in TEGS-VI and as also the matter Involving other executive/officials, making it a composite case, in terms of Regulation 19 of Union Bank of India Officers Employee's (Discipline and Appeal) Regulations, 1976 and guidelines of the Central Vigilance Commission as circulated vide Circular NO. 07/04/15 dated 27.04.2015 (ANNEXURE CA - 4) the matter has been sent to the central Vigilance Commission for first stage advice.

34. That accordingly a request has been sent to Central Vigilance Officer (CVO) of the Bank to forward the matter on 23.04.2019 to Central Vigilance Commission (CVC) seeking their first stage. The advice of CVC is still awaited."

The Disciplinary Authority/Executive Director of the Respondent Bank (hereinafter referred to as, "Executive Director") submitted personal affidavit dated 13th June, 2019 before the High Court, inter

alia, stating that the matter was referred to the CVC, and the charge sheet would be issued to the appellant on receipt of the CVC's advice. The relevant extract of the Executive Director's affidavit is as follows:

"27. That on receipt of the advice of CVC, the respondent bank shall be soon issuing Articles of Charge/Chargesheet to the appellant along with other concerned officials who are found to be involved in the matter."

(emphasis added)

On 18th June, 2019, the respondent-Bank served an antedated charge sheet of 10th June, 2019, to the appellant, in relation to the allegations levied in the show-cause notices. However, this charge sheet was served without receiving the CVC's advice.

5. Learned Single Judge of the High Court by Order dated 20th June, 2019 quashed Order dated 21st August, 2018 on the ground that continuing the suspension of the appellant since 21st August 2018 without even initiating or serving charge sheet for almost a year and that too at the fag end of the career of the appellant is wholly arbitrary and illegal. At the same time, the High Court granted liberty to the Respondent Bank to initiate any further proceedings that it may deem fit. Accordingly, the Executive Director issued a letter dated 28th June, 2019 to the appellant, stating that the disciplinary proceedings against him will continue and that he would not receive any pay, allowance or retiral benefits for the period till the completion of the disciplinary proceedings.

6. The appellant preferred Civil Misc. Writ Petition No. 10800 of 2019 before the Hon'ble High Court of Allahabad seeking quashing of the charge sheet dated 10th June, 2019 on the ground that the charge sheet was served without seeking the advice of the CVC, which violated the mandatory requirement under Regulation 19 of the 1976 Regulations. The appellant also sought a direction to the Respondent Bank to consider his case for payment of pension under the Union Bank of India Employees' Pension Regulation, 1995 and to pay the pension to the Appellant along with consequential relief.

7. The learned Single Judge by his judgement and order dated 26th July, 2019 dismissed the Writ Petition holding that no ground was made out to quash the charge sheet and directed the appellant to cooperate in the enquiry. The appellant challenged the said Order by filing Special Appeal No. 963 of 2019. The Division Bench by impugned Judgement and Order dated 20th September, 2019 dismissed the appeal, holding that it was not necessary to seek the CVC's advice before issuing the charge sheet.

RELEVANT PROVISIONS

8. The issues involved in this appeal require consideration of Regulation 19 of the 1976 Regulations, which reads as follows:

"Regulation 19. Consultation with Central Vigilance Commission: The Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle" The regulation requires the Respondent Bank to consult the CVC in respect of all disciplinary cases with a vigilance angle, wherever deemed necessary. The language of the rule stipulates a mandatory consultation obligation by the usage of the word 'shall', and at the same time grants the Respondent Bank a degree of discretion by limiting the consultation to 'wherever necessary'. A question may arise whether the said provision is mandatory or directory.

SUBMISSIONS

Submissions on behalf of the Appellant

9. The learned senior counsel appearing for the appellant submitted that Regulation 19 of the 1976 Regulations, by using the words 'shall consult', imposes a mandatory requirement on the Respondent Bank to seek the CVC's advice in all complaints involving allegations of corruption, before issuance of a charge sheet to an employee. In support of this contention, learned senior counsel referred to CVC's Circular No. 99/VGL/66 dated 28th September, 2000, Circular No. 24/4/04 dated 15th April, 2004 and Circular No. 07/04/15 dated 27th April, 2015. The relevant extracts of the circulars are reproduced herein:

Circular No. 99/VGL/66 dated 28th September, 2000

"3. The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second

stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report."

Circular No. 24/4/04 dated 15th April, 2004

"3. It is clarified that investigation/inquiry reports on the complaints/cases arising out of audit and inspection, etc, involving a vigilance angle will have to be referred to the Commission for advice even if the competent authority in the bank decides to close the case, if any of the officer involved is of the level for whom the Commission's advice is required."

Circular No. 07/04/15 dated 27th April, 2015

"As per the existing scheme for consultation with the Commission, the CVOs of the Ministries / Departments and all other organisations are required to seek the Commission's first stage advice after obtaining the tentative views of Disciplinary Authorities (DAs) on the reports of the preliminary inquiry / investigation of all complaints involving allegation(s) of corruption or improper motive; or if the alleged facts prima-facie indicate an element of vigilance angle which are registered in the Vigilance Complaint Register involving Category-A officers (i.e., All India Service Officers serving in connection with the affairs of the Union, Group-A officers of the Central Govt. and the levels and categories of officers of CPSUs, Public Sector Banks, Insurance companies, Financial Institutions, Societies and other local authorities as notified by the Government u/s 8(2) of CVC Act, 2003) before the competent authority takes a final decision in the matter.

Such references also include cases wherein the allegations on inquiry do not prima facie indicate any vigilance overtone / angle / corruption. On a review of the scheme of consultation with the Commission and to expedite the processes of vigilance administration in the Ministries/Departments/Organisations, it has been decided that, henceforth after inquiry / investigation by the CVO in complaints / matters relating to Category-A officers as well as composite cases wherein, Category-B officers are also involved, if the allegations, on inquiry do not indicate prima facie vigilance angle / corruption and relate to purely nonvigilance / administrative lapses, the case would be decided by the CVO and the DA concerned of the public servant at the level of Ministry / Department / Organisation concerned.

The CVO's reports recommending administrative / disciplinary action in nonvigilance /administrative lapses would, therefore, be submitted to the DA and if the DA agrees to the recommendations of the CVO, the case would be finalised at the level of the Ministry/ Department/ Organisation concerned. In all such matters, no reference would be required to be made to the Commission seeking its first stage advice. However, in case there is a difference of opinion between the CVO and the DA as to the presence of vigilance angle, the matter as also enquiry reports on complaints having vigilance angle though unsubstantiated would continue to be referred to the Commission for first stage advice. The provisions of the Vigilance Manual and the Special Chapter on Vigilance Management in Public Sector Enterprises, Public Sector Banks and Insurance Companies would stand amended to this extent."

(underline supplied)

Relying on the circulars mentioned above, the learned senior counsel submitted that consultation with the CVC is a necessary pre-requisite for initiating disciplinary proceedings against an employee.

10. The learned senior counsel also drew attention to Section 8(1)(h) of the Central Vigilance Commission Act, 2003, wherein the CVC has been bestowed the function and power to exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

Attention was also drawn to Clause 7.9.1 of the CVC's Vigilance Manual, 2017, whereby Central Vigilance Officers of the Ministries/Departments and all other organisations are required to seek the Commission's first stage advice after obtaining the tentative views of Disciplinary Authorities on the reports of the preliminary inquiry/investigation of all complaints involving allegation(s) of corruption or improper motive; or if the alleged facts prima-facie indicate an element of vigilance angle.

11. Lastly, the learned senior counsel referred to affidavits dated 23rd May, 2019 and 13th June, 2019, filed by the General Manager and the Executive Director, respectively, before the Hon'ble High Court in Civil Misc. Writ Petition No. 6976 of 2019. Learned senior counsel stated that Respondents vide these two affidavits have admitted that the proceedings initiated against the appellant have a vigilance angle and therefore the case has been referred to the CVC for their advice in terms of Regulation 19 of the 1976 Regulations. Thus, the Respondents are now estopped from seeking to

initiate unilateral disciplinary proceedings against the appellant without obtaining the CVC's first-stage advice.

Submissions on behalf of the Respondents

12. The learned counsel appearing for the Respondents submitted that as per Clause 7.9.1 of the CVC's Manual, the Commission's first stage advice is required to be sought 'before the competent authority takes a final decision in the matter'. Learned counsel contends that the presentation of a charge sheet would not amount to taking the final decision in the matter, but would rather only amount to initiation of the disciplinary proceedings, and therefore, the charge sheet cannot be vitiated for not taking the CVC's advice.

13. The learned counsel further submitted that the Respondent Bank had sought the CVC's first-stage advice via their letter dated 17th May 2019; however, they received the CVC's response on 21st June 2019. The advice was taken as a matter of abundant caution. The learned counsel contended that the Rules or Regulations must not be interpreted in a manner that stalls or delays the disciplinary process until receipt of the advice from the CVC. The disciplinary proceedings against the delinquents cannot be frustrated solely on account of the CVC's inaction. Learned counsel also submitted that the pendency of vigilance proceedings does not bar the internal disciplinary proceedings by the Respondent Bank against an employee, and accordingly, the Respondent Bank could issue the charge sheet.

14. Lastly, the learned counsel submitted that it was incorrect to suggest that the Respondents have taken two contradictory and inconsistent stands in the two rounds of litigation before the Hon'ble High Court. Learned counsel denied that the charge sheet was prepared hastily and that the same was ante-dated and served only by email on account of any mala fide reasons, extraneous consideration, or personal bias. Moreover, learned counsel submitted that no prejudice was caused to the appellant on account of the serving of the charge sheet and the continuation of disciplinary proceedings against him.

CONSIDERATION OF SUBMISSIONS

15. In the present case, factual aspects are very relevant. Material factual aspects set out in a chronology are as under:-

- a. The appellant was employed with the respondent Union Bank of India from the year 1984;
- b. In the year 2016, he was promoted to the post of Deputy General Manager;
- c. On 30th June 2019, the appellant was to be superannuated;
- d. The appellant had a blemishless record till 21st August 2018, when the Bank suspended him. The allegation against the appellant was that, as the Regional Head at Meerut, he adopted a very casual approach while sanctioning credit proposals in 16 accounts sent by the Mid-corporate Ghaziabad branch. It is alleged that the appellant sanctioned huge limits to newly incorporated firms without ensuring proper diligence by the branch/processing officers;
- e. On 18th January 2019 and 27th March 2019, two show cause notices were served upon the appellant, calling upon him to show cause why a disciplinary action should not be initiated against him;
- f. As the representations made by the appellant for revoking suspension were not considered, the appellant filed a writ petition before the Hon'ble High Court of Allahabad to challenge the order of suspension. In the said writ petition, the General Manager filed his affidavit justifying the delay in issuing the charge sheet, stating that the matter was referred to the CVC for first-stage advice, but the advice was not received. He relied upon Regulation 19 of the 1976 Regulations. In the same writ petition, another affidavit dated 13th June 2019 was filed by the Executive Director stating that on receipt of advice from the CVC, Articles of charge/charge sheet will be issued to the appellant;
- g. By the order dated 20th June 2019, the High Court quashed the order of suspension dated 21st August 2018 on the ground that continuing the suspension of the appellant from 21st August 2018 without even initiating or serving a charge sheet for almost a year was arbitrary and illegal. However, liberty was reserved to the Bank to initiate further proceedings; and

h. On 18th June 2016, without waiting for the CVC advice, a charge sheet dated 10th June 2019 was served upon the appellant. Thereafter, by a letter dated 28th June 2019, the Executive Director informed the appellant that the disciplinary proceedings against him would continue, and he would not receive any pay, allowances, or retiral benefits until the completion of the proceedings.

16. Regulation 19 of the 1976 Regulations stipulates that the Bank shall consult the CVC, wherever necessary, in respect of disciplinary cases having a vigilance angle. A reading of the regulation makes it clear that in cases where the Respondent Bank deems that the consultation is necessary due to the case having a vigilance angle, the Respondent Bank is required to seek the advice of the CVC. Therefore, while the learned counsel has argued the question of whether consultation with the CVC is mandatory or discretionary, in the facts of this case, it is not necessary for us to delve into the said question. The reason is that the Respondent Bank has itself acknowledged that the case had a vigilance angle and consultation with the CVC is necessary, and therefore, the Respondent Bank had sought the opinion of the CVC.

17. We have already quoted the relevant parts of the Circulars dated 28th September 2000, 15th April 2004 and 27th April 2015 issued by the CVC. As can be seen from the Circulars, the CVC is being consulted at two stages for its advice. The first stage advice is sought before the issuance of the charge sheet, and the second stage advice is either on receipt of the reply to the charge sheet or on receipt of the enquiry report.

As can be seen from the affidavit dated 23rd May 2019, filed by the General Manager of the Bank, the first stage advice of the CVC has been sought. The affidavit dated 13th June 2019 filed by the Executive Director also clearly states that on the receipt of the advice of the CVC, the Bank shall issue a charge sheet to the appellant. As stated earlier, within five days of filing the said affidavit, the charge sheet dated 10th June 2019 was served upon the appellant. This was done without receiving the first stage advice from the CVC.

18. In its counter-affidavit, the Respondent Bank has admitted that the CVC's first-stage advice was sought on 17th May 2019. Notably, the advice was sought from the CVC nine months after the suspension order. In fact, on 18th January 2019 and 27th March 2019, show-cause notices were issued to the appellant, calling upon him to show cause why disciplinary action should not be initiated against him.

19. Thus, the respondent-Bank accepted that Regulation 19 of the 1976 Regulations was applicable and therefore, firststage advice of the CVC was sought. Even before getting the first stage advice, on 10th June 2019, the charge sheet was kept ready which was served upon the appellant on 18th June 2019. In this case, the Respondent Bank itself accepted the necessity of seeking first-stage advice from the CVC. Therefore, it was not open for the Bank to serve the charge sheet without receiving and considering the first stage advice by the CVC.

20. As stated earlier, only ten months before the date of superannuation, an order of suspension was served upon the appellant. This was done after 34 years of unblemished service. Although it was necessary to take the first stage advice of the CVC, the advice was sought only as late as on 17th May 2019. Twelve days before reaching the age of superannuation, a charge sheet was served upon the appellant, without receiving and considering the CVC's advice. This was despite the specific statement made by the Executive Director in the earlier petition on oath, which stated that the charge sheet would only be served upon receipt of advice from the CVC.

21. Once, the first stage advice of the CVC was called, it was the duty of the respondent-Bank to consider the advice and then take a decision to serve the chargesheet. Thus, the actions of the respondent-Bank are mala fide and arbitrary. The appellant was sought to be victimised at the fag end of his unblemished career of 34 years.

22. The High Court committed a gross error by holding that Regulation 19 of the 1976 Regulations was not mandatory. This issue was irrelevant, as the Bank had itself acknowledged that in the facts of the case, it was necessary to seek first-stage advice from the CVC. It is also pertinent to note that no record was placed in the High Court to indicate that the CVC report had been received.

23. Now, at this stage, it will be unjust to allow the respondent-Bank to resume disciplinary proceedings. Almost six years have passed since the superannuation of the Appellant.

24. Though the appellant will be entitled to all retiral benefits, he shall not be entitled to any back wages.

CONCLUSION

25. Accordingly, the disciplinary proceedings, including the charge sheet dated 10th June 2019, are hereby quashed and set aside. Although the appellant shall not be entitled to back wages and allowances, the Respondent Bank shall release all retirement benefits admissible on the basis that the appellant has superannuated as of 30th June 2019.

The amount of retirement benefits due to the appellant in accordance with the law, shall be paid to the appellant within three months from today. The appeal is allowed on the above terms.

.....J. (Abhay S. Oka)

.....J. (Augustine George Masih)

New Delhi;

May 20, 2025.

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