BLOGS

# Detailed Case Analysis: Alok Kumar Verma v. Union of India and Anr.

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## Introduction

The case of Alok Verma v. Union of India & Anr. revolves around the independence of the Central Bureau of Investigation (CBI) and the procedural safeguards for the removal of its Director. The case arose when Alok Verma, the then Director of the CBI, was divested of his powers by the Central Government due to allegations of corruption and misconduct. This removal was challenged in the Supreme Court, leading to a significant judgment concerning the tenure protection of the CBI Director.

## Facts of the Case

At the heart of the controversy were the then CBI Director, Alok Kumar Verma (the Petitioner), and the Special Director, Rakesh Asthana. Both senior officers accused each other of corruption and interference in official duties, creating a public spectacle and severely damaging the credibility of India's premier investigating agency.

- Internal Conflict: Tensions between Director Alok Verma and Special Director Rakesh Asthana had been simmering for some time, erupting into open allegations of corruption and wrongdoing. Both officers levelled serious charges against each other, creating an irreconcilable divide within the CBI's top leadership.
- FIR against Asthana: On October 15, 2018, the CBI, under the direction of Alok Verma, registered a First Information Report (FIR) against Rakesh Asthana based on allegations of bribery. This FIR triggered immediate retaliatory actions.
- Government Intervention and Forced Leave: On the intervening night of October 23-24, 2018, acting under Section 4(1) of the Delhi Special Police Establishment (DSPE) Act, 1946, the Central Government, through the Central Vigilance Commission (CVC), passed an order divesting Alok Kumar Verma of his powers as CBI Director and also divesting Rakesh Asthana

of his powers as Special Director. Both were sent on leave, effectively removing them from their positions and handing over interim charge to M. Nageswara Rao, a Joint Director in the CBI. This action was purportedly taken in the "public interest" and to ensure the impartiality of investigations into the allegations against both officers.

- Challenge to Government Order: Alok Kumar Verma challenged the Government's order dated October 23/24, 2018, before the Supreme Court by way of a Writ Petition under Article 32 of the Constitution. He argued that the Government's action was illegal, arbitrary, and violated the provisions of the DSPE Act and the principles of natural justice. He contended that the Government had no power to unilaterally divest him of his functions and send him on leave, especially considering the fixed tenure afforded to the CBI Director under the DSPE Act as amended by the CVC Act, 2003.

## Issues Before the Court

The primary legal issues before the Supreme Court were:

1. Interpretation of Section 4(1) of the DSPE Act: Whether Section 4(1) of the DSPE Act empowered the Central Government to divest the CBI Director of his powers and functions and send him on leave, particularly in light of the fixed tenure guaranteed under Section 4B of the DSPE Act (introduced by the CVC Act, 2003)? Did Section 4(1) allow for such an action in circumstances other than those explicitly specified in the Act, namely, upon transfer, superannuation, or resignation?
2. Fixed Tenure and Security of Tenure of CBI Director: Whether the fixed tenure of two years for the CBI Director, introduced to ensure functional autonomy and insulate the CBI from external pressures, was undermined by the Government's action? Did the Government's action violate the principle of security of tenure afforded to the CBI Director?
3. Role and Powers of the CVC in Relation to CBI Director: Whether the CVC could exercise powers under Section 4(1) of the DSPE Act in relation to the CBI Director, particularly in the absence of any recommendations for removal from the Selection Committee constituted under Section 4A of the DSPE Act? What was the extent of the CVC's supervisory role over the CBI in relation to the Director?
4. Principles of Natural Justice: Whether the Government's action violated principles of natural justice, specifically the audi alteram partem rule (right to be heard), by not providing Alok

Verma with an opportunity to be heard before divesting him of his powers and sending him on leave?

## Rule Applied in the Alok Verma Case

The Court primarily considered the following legal provisions and principles:

- Delhi Special Police Establishment (DSPE) Act, 1946:
  - Section 4: Superintendence of and administration of Special Police Establishment.
  - Section 4A: Constitution of Committee for appointment of Director.
  - Section 4B: Term of office of Director of Delhi Special Police Establishment.
  - Section 4C: Procedure for appointment of Director.
- Central Vigilance Commission Act, 2003: This Act amended the DSPE Act, introducing Sections 4A, 4B, and 4C, aiming to enhance the CBI's independence.
- Principles of Natural Justice: Specifically, the audi alteram partem rule, which mandates that no person should be condemned unheard.
- Doctrine of Implied Limitation: The Court considered whether the explicit provisions regarding the appointment and tenure of the CBI Director impliedly limited the general power under Section 4(1) of the DSPE Act to take action like divesting powers and sending on leave.
- Purpose and Intent of Legislation: The Court examined the legislative intent behind introducing the fixed tenure for the CBI Director, which was to ensure the CBI's autonomy and protect it from undue influence.

## Judgement Given

The Supreme Court, in a unanimous judgment delivered by Justice Nariman, ruled in favor of Alok Kumar Verma, albeit partially. The Court quashed and set aside the Central Government's order dated October 23/24, 2018, which had divested Alok Kumar Verma of his powers and functions as CBI Director and sent him on leave. The Court reinstated Alok Kumar Verma as the CBI Director.

However, the Court also qualified its order. It held that while the Government's order was legally unsustainable, in view of the "very peculiar and extraordinary circumstances" and the allegations of corruption involving the top officers, it was not appropriate for Alok Kumar Verma to continue to exercise his powers as CBI Director immediately.

Therefore, the Court directed that Alok Kumar Verma would remain reinstated as CBI Director, but he would be “non-functional” until the High Powered Committee constituted under Section 4A of the DSPE Act (comprising the Prime Minister, the Leader of Opposition, and the Chief Justice of India or his nominee) considered the matter and took a decision on his continuation as Director. The Court directed the Committee to convene within a week and take a decision.

## Rationale/Reasoning of the Court

The Court’s reasoning was based on the following key points:

1. Narrow Interpretation of Section 4(1) DSPE Act: The Court adopted a restrictive interpretation of Section 4(1) of the DSPE Act. It held that Section 4(1), which vests superintendence over the CBI in the Central Government, is a general provision. However, this general power must be read in harmony with the specific provisions introduced by the CVC Act, particularly Sections 4A, 4B, and 4C, which provide for a fixed tenure and a specific procedure for the appointment and removal of the CBI Director. The Court reasoned that Section 4(1) could not be interpreted to override these specific provisions aimed at ensuring the CBI’s independence.
2. Fixed Tenure as a Safeguard for Independence: The Court emphasized the legislative intent behind introducing a fixed two-year tenure for the CBI Director. This was explicitly to insulate the CBI from extraneous influences and ensure its functional autonomy. Divesting the Director of powers and sending him on leave by resorting to Section 4(1) would directly undermine this objective and render the fixed tenure provision meaningless. The Court stated that “security of tenure” was paramount.
3. Procedure for Removal is Sacrosanct: The DSPE Act, as amended, provides a specific procedure for the appointment of the CBI Director through a High Powered Committee. The Court reasoned that by implication, any removal or significant alteration of the Director’s functions must also be through a similar, if not identical, process involving consultation with the same committee. Unilaterally divesting the Director of powers and sending him on leave without any such consultative process was considered a violation of this implied procedural requirement.
4. No Express Power to Send on Leave: The Court noted that neither the DSPE Act nor the CVC Act explicitly empowers the Central Government to send the CBI Director on leave or to divest him of his powers in the manner it had done. The absence of such an express power further

strengthened the argument that Section 4(1) should not be construed to include this authority, especially given the specific tenure provisions.

5. Principles of Natural Justice Implicitly Considered: While not explicitly stating a violation of natural justice in terms of audi alteram partem, the Court's reasoning underscored the need for a process involving consultation and consideration by a High Powered Committee before taking such drastic actions against the CBI Director. The unilateral nature of the Government's action implicitly went against the spirit of procedural fairness.
6. Exceptional Circumstances Acknowledged but Procedure Upheld: The Court recognized the "extraordinary" and "unprecedented" circumstances within the CBI. However, it firmly held that even in such circumstances, the rule of law and adherence to statutory procedures must prevail. The ends could not justify the means, especially when it involved undermining the statutory safeguards designed for the CBI Director's tenure and the agency's independence.

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