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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 459/94 199
T.A. No.

DATE OF DECISION 27.3.1997

S.S.Darbari

Petitioner

Mr. R.N.Methur

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Mr. U.D.Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. O.P.Sharma, Member (Administrative)

The Hon'ble Mr. Ratan Prakash, Member (Judicial)

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
- ✓ 2. To be referred to the Reporter or not ? *Yes*
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ratan Prakash
(RATAN PRAKASH)

MEM BER (J)

O.P.Sharma
(O.P.SHARMA)

MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH:JAIPUR.

O.A.No.459/94

Date of order: 27-3-1997

S.S.Darbari son of Shri L.S.Darbari, Resident of D-671, Malviya Nagar, Jaipur, presently posted as Director (Vigilance), Department of Forest, Government of Rajasthan, Jaipur.

:Applicant

Versus

1. Union of India through Secretary to Govt., Department of Home, Government of India, New Delhi.
2. State of Rajasthan through Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.
3. Shri V.K.Thanvi, Director General of Police (Retd.), Gautam Marg, Hanuman Nagar, Thatipura Road, Jaipur.
4. Shri Balwant Singh, Additional Director General of Police & Inspector General (Prison), Agra Road, Jaipur.

: Respondents

Mr.R.N.Mathur, counsel for the applicant
Mr.U.D.Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRATAP, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI RATAN PRATAP, MEMBER (JUDICIAL)

This O.A. filed by Shri S.S.Darbari presently D.I.G.of Police, Rajasthan, and member of the Indian Police Service - 1967 batch, Rajasthan Cadre, is an illustrative one, who has mainly prayed to set-aside and quash the charge-sheet dated 17.6.1994 (Annex.A/1) issued to him by the State of Rajasthan, respondent No.2 u/R 8 of the A.I.S.(Disciplinary and Appeal) Rules, 1969.

2. The applicant has been served with the aforesaid charge-sheet with a Memo dated 20.6.1994. Six charges were levelled against the applicant as per the details given in the statement of imputation and allegations annexed

therewith. Briefly the gist of charges is as under:-

i) Proceeded on Sick Leave from 3.11.1992 to 7.11.1992 without getting it sanctioned; assumed duties on 9.11.1992 without Sick and Fitness Certificates; produced fitness certificate dated 13.11.1992, whereas found to resume duty on 8.11.1992 and violated rule 23 of All India Service Rules.

ii) For unauthorised absence. Though proceeded on leave after obtaining sanction for casual leave from 3.2.93 to 14.2.93; thereafter sent telegram on 16.2.93 for Medical Leave without mentioning the period of leave, nor gave address. Letter sent to him at recorded address but he remained absent till 28.4.93 and resumed duties on 29.4.93. Applied for conversion of earlier Casual Leave from 3.2.93 to 14.2.93 into commuted leave with optional Holidays and Official Holidays which was not sanctioned and entire period from 3.2.93 to 28.4.93 deemed to be unauthorised period.

iii) Used unparliamentary language against his Office Assistant.

iv) Obtained copies of Note-sheets ^{from official files} without authority.

v) Non-performance of work entrusted to him and disobedience of the orders of the senior officers.

vi) Was found absent on specified dates when called by the Additional Director General of Police.

3. The grievance of the applicant is that the aforesaid charge-sheet has been issued to deny him promotion on the post of Inspector General of Police (IGP) and also to penalise him for his conduct in approaching the Tribunal by filing an earlier O.A.No.656/1993 wherein directions were issued to summon the official records from the respondents Government. He has also challenged the aforesaid charge-sheet on the ground of malafide of respondent No.3, the then

Director General of Police, who is said to be prejudiciously disposed against him since long. Correctness, legality and validity of rules of All India Service (Conduct) Rules, 1968 as also Rule 8 of the All India Service (Disciplinary & Appeal) Rules, 1969 has also been challenged. He has further sought a direction against the respondents to consider his case for promotion on the post of Inspector General of Police without taking into consideration the aforesaid charge-sheet and also to release his salary for the months of February, March, April, July and August, 1993.

4. This application has been mainly contested by the respondents Nos. 2 and 4. No reply has been filed on behalf of respondents Nos. 1 and 3. The applicant has also filed a rejoinder to the reply filed by the respondents and in their own turn, the respondents have further submitted a reply to the rejoinder.

5. The stand of the respondents has been that the disciplinary proceedings initiated against the applicant are based on record and the facts stated in the statement and allegations of charges exhibit that he has committed misconduct. That to conduct an enquiry against the applicant, the disciplinary authority has appointed Shri Amitabh Gupta, Additional D.G.P. as an enquiry officer vide order dated 4.1.1995 (Annex.E/1). That instead of defending the charge-sheet as per law; the applicant has chosen to approach the Tribunal, which is not permissible as maintained by successive decisions of Hon'ble the Supreme Court on this subject. It has, therefore, been urged that the applicant can very well defend his case before the enquiry officer; that the Tribunal at this stage cannot

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adjudicate upon the charges levelled against him and the application deserves to be dismissed.

6. We heard the learned counsel for the applicant Shri R.N.Mathur and Shri U.D.Sharma, for respondents Nos. 2 & 4 (the State of Rajasthan and Shri Balwant Singh, Addl.DGP & IG (Prisons) respectively) at length and have examined the records in great detail.

7. It has been vehemently argued on behalf of the applicant that all the charges levelled against him are vague and have been raised at the instance of respondent No.3; that none of the allegations made in the Chargesheet constitute any misconduct entailing disciplinary proceedings. Learned counsel for the applicant has taken us through the details of each and every charge pertaining to the applicant's proceeding on leave; remaining sick, joining duties after obtaining sickness and fitness certificates, over-staying after the grant of sanctioned leave and the malice of respondent No.3 towards the applicant. The main argument of the learned counsel for the applicant has been that there is vast difference between the correctness of decision to issue a charge-sheet and the correctness of the charges itself. According to the learned counsel, the jurisdiction of the Courts/Tribunals has been restricted from interfering in the correctness of charges, but it nowhere places a bar on the jurisdiction of the Tribunal to assess the correctness of the decision to issue a charge-sheet. In other words, what has been insisted upon by the learned counsel for the applicant is that the charges levelled against the applicant are without any foundation;

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not borne out from the records; highly vague and devoid of truth. Accordingly it has been urged that the charge-sheet Annexure A-1 issued to the applicant deserves to be quashed. In support of his arguments, the learned counsel for the applicant has relied upon:-

- i) 1971 (2) SLR 103 (S.C.) Surath Chandra Vs. State of West Bengal.
- ii) 1986 RLR 1 (Raj. H.C.)
- iii) AIR 1964 S.C. 72 Pratap Singh Vs. State of Punjab.
- iv) AIR 1986 S.C. 872; Express Newspapers Ltd., Vs. UOI & Ors.

8. On the contrary, it has been argued on behalf of the respondents that at this stage, it is premature for the Tribunal to weigh and evaluate the basis of issuing charge-sheet to the applicant. The applicant has all the opportunities to defend himself as permissible under the rules. Citing the judgment of Hon'ble Supreme Court in Union of India & Ors. Vs. Upendra Singh, 1994(1) SLR 831, it has been vehemently urged that it is now settled that the jurisdiction of the Tribunal to interfere at the stage of issuing charge-sheet is highly uncalled for and there is no substance in the application. It has also been urged that observations made by this Tribunal in earlier O.A. No. 656/93 decided on 4.3.1996 cannot be made the basis of coming to a conclusion that it is because of the malafide on the part of the respondent No. 3 (who was respondent No. 7 in the earlier OA) that the present charge-sheet has been issued to the applicant since respondent No. 3 has retired in the year 1993, whereas, the charge-sheet has been issued to him in June, 1994 and that too after obtaining prior sanction of the Chief Minister of the State and on being processed at different levels by the Government. By supporting his arguments with:

- i) Union of India Vs. Upendra Singh, 1993(1) SLR 831

ii) Union of India Vs. Ashok Kacker, (1995) 29 ATC 245

iii) Transport Comm., Madras Vs. A. Radhakrishna, 1995 (1) SLR 239;

the learned counsel for the respondents has pleaded for rejection of this O.A.

9. We have given anxious thought to the able arguments addressed on behalf of both the sides.

10. At the outset and before going into the merits of this O.A., it may be mentioned that during the pendency of this O.A., the applicant has also filed Misc. Applications Nos. 225/95 and 582/95 to seek interim directions which having remained pending so far are also being disposed of by this order.

11. The learned counsel for the parties have addressed detailed arguments on the nature, extent and implications of the charges levelled against the applicant in the charge-sheet dated 17.6.1994 (Annex.A/1). However, in view of the existing position of law with regard to the interference of the Courts/Tribunals at the stage of furnishing a charge-sheet to the delinquent employee; we have first to delineate upon the issue arising therefrom. The issue, therefore, which goes at the root of the controversy raised in the O.A., is :

Whether this Tribunal can interfere in the matters of charge-sheet issued to an official under the Rules governing his service; before a final order is passed by the Disciplinary Authority on completion of the enquiry ?

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12. This controversy has been raised repeatedly before various Courts/Tribunals and has also been agitated upto the level of Hon'ble the Supreme Court. One recent authoritative pronouncement of Hon'ble the Supreme Court in this matter has been in the case of Union of India and Ors. Vs. Upendra Singh, 1994(1) SLR 831. In this case, a Memorandum of charges was issued to the respondent accompanied by a statement of imputations of misconduct. The respondent Upendra Singh soon after the Memo of charge was served upon him, approached the Principal Bench of the Tribunal for quashing the charges. The Tribunal admitted the O.A., and passed an interim order. Against the said interim order, an appeal was preferred by the Union of India before Hon'ble the Supreme Court which was allowed and the Tribunal was directed " to deal with the matter in the light of the observations made by that Court in Union of India & Ors. Vs. A.W.Saxena, 1992 (4) SLR 11 (S.C.)". Thereafter the Principal Bench of the Tribunal allowed the O.A. On an appeal against it, Hon'ble the Supreme Court observed:

"We must say the Principal Bench went into the correctness of the charges on the basis of the material produced by the respondents and quashed the charges holding that the charges do not indicate any correct motive of culpability on the part of the respondents."

It further observed:

"we must say that we are little surprised at the course adopted by the Tribunal. In its order dated 10.9.1992 this Court specifically drew attention to the observations in A.W.Saxena's case that the Tribunal ought not to interfere at an inter-locutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to produce at the query. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the Enquiry Officer appointed by him) and found that the charges are not true."

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It was in this background that in para 6 of the judgment in the case of Union of India & Ors. Vs. Upendra Singh (supra), Hon'ble the Supreme Court reiterated the principle of law laid down pertaining to judicial review in the case of H.E. Gandhi, Excise and Custom Officer-cum-Assessing Authority, Karnol Vs. Gopi Nath & Sons (1992 Suppl. (2) S.C.C. 312). Hon'ble the Supreme Court held that:

In the case of charges framed in a disciplinary inquiry, the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of charges of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out of the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter come to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court."

In para 7 of this judgment, Hon'ble the Supreme Court further went to observe:

"Now if a Court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the Tribunal at the stage of framing of charges."

While pointing to the six clauses (though not catalogued as an exhaustive); and enumerated in the case of Union of India Vs. K.R. Dhawan, 1993 (1) SLP 700 (S.C.); within which disciplinary action can be taken, Hon'ble the Supreme Court in Upendra Singh's case while refuting the arguments to the contrary concluded in para 14:

"It is not possible to agree. In any event, the truth or otherwise the charges is a matter for enquiry."

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13. The aforesaid observations made in the case of Upendra Singh were in effect upholding its earlier pronouncements in such matters that at the initial stage of framing of charges, the Tribunal or Court had no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot usurp the functions of the Inquiry Officer or for that matter the disciplinary authority. This view of Hon'ble the Supreme Court has been reiterated further in the case of Union of India & Anr. vs. Ashok Kacker, (1995) 29 ATC 145 as also in the case of Transport Commissioner, Madras-5 vs. A. Radha Krishna Moorthy (1995) 1 SLE 239. In A. Radha Krishna Moorthy's case (supra), Hon'ble the Supreme Court observed:

"So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of the punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making process. For this reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law."

The latest pronouncement reiterating the law laid down by Hon'ble the Supreme Court in this regard and removing the existing doubts, if any; after Upendra Singh (supra) is of; The Deputy Inspector General of Police Vs. P.S. Swaminathan, 1997 (1) SLE 176. In this case, Hon'ble the Supreme Court has gone to the extent to lay down that even though the charges are totally vague and do not disclose any misconduct for which the charges have been framed, the Tribunal or the Court should not interfere with it. Herein ^{while} the respondent was ^{is} working as an Inspector of Police; a special raid was made by

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District Special Branch, Coimbatore Rural District in the farm house of one Eswaramoorthy Gounder on 19.8.1991. The incriminating material recovered therefrom, indicated making of payments to certain persons including the respondent. A charge memo imputing misconduct was issued to him. He challenged it in the Administrative Tribunal. Tribunal set-aside the charge memo on the ground that charges were vague. On appeal by special leave; Hon'ble the Supreme Court held:

"It is settled law by catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge-sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage."

Thus, there remains no ambiguity about the law propounded by Hon'ble the Supreme Court in matters where the delinquent employee tries to rush and approach the Tribunal/Court at the initial stage of service of charge-sheet to stall the disciplinary proceedings.

14. In the instant case also, this is what has exactly happened. The applicant was served with a charge-sheet dated 17.6.1994 (Annx.A/1) on 20.6.1994 by respondent No.2, the State of Rajasthan. In this charge-sheet, six charges have been levelled against the applicant, the details of which

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have been given in the statement of imputations and allegations annexed therewith. The applicant instead of pursuing and defending the charge-sheet before the enquiry officer has approached this Tribunal by filing the present O.A. on 22.9.1994 and thereafter filed the reply to the charge-sheet on 28.9.1994. In these proceedings, the disciplinary authority has already appointed an enquiry officer of the level of Additional Director General of Police vide order dated 4.1.1995 (Annx.E/1). The applicant has also been supplied the documents sought for by him vide order dated 22.1.1996 in MA 582/95. Had the applicant defended himself in the disciplinary proceedings as per the rules applicable to a Member of All India Services, he could ^{have} ~~could~~ by now obtained the result therein. Instead he chose to rush to the Tribunal to first get a finding on alleged actions/omissions stated in the charge-sheet; and as to whether they do constitute a misconduct or not. The learned counsel for the applicant in this regard has placed reliance on a decision of Hon'ble the Supreme Court in the case of Surath Chandra Chakravorthy vs. State of West Bengal, 1971(2) SLR Vol.6 103 and tried to insist that the allegations do not lie within the domain of misconduct entailing any disciplinary proceedings. In S.C.Chakravorthy's case, in a departmental enquiry a charge-sheet was served upon the delinquent officer. Each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish material to the appellant to defend himself. Having found that a statement of allegations on which each charge was based was never sent to the appellant and there has been complete disregard of fundamental Rule 55 of the Central Civil Services

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(Classification , Control & Appeal) Rules, which laid down a mandate that the charges must be accompanied by a statement of allegations; Hon'ble the Supreme Court observed:

We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the trial Judge was fully justified in decreeing the Suit."

Therefore, the facts in the case of Surath Chandra Chakravarthy (supra) are distinguishable from those available in the instant case. Here, the applicant has not only been supplied with the memo of charges, but also with a statement of imputations and allegations and that too; in great detail. At this stage, therefore, this Tribunal would not go into to find that the charges levelled against the applicant are vague, ambiguous or uncertain.

15. Whether an act or omission of a Government employee is a misconduct or not and whether it entails minor or major penalty; is a question of fact which has to be determined by a duly constituted authority under the statutory rules governing the service of such an employee. In case this Tribunal ventures to assign upon itself the functions of a fact finding authority, viz., the Disciplinary Authority, it would not only be over-stepping its jurisdiction conferred upon by Administrative Tribunal's Act, 1985, but would also be encroaching upon the jurisdiction conferred upon a duly constituted authority which investigates such matters. The jurisdiction of this Tribunal is not unbridled one. It is a creature of a statute. It has to function and operate within the limits circumscribed and laid down therein. It is by virtue of Section 19 of the Administrative Tribunals Act,

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(the Act, for short) that a person aggrieved has been enabled to approach the Tribunal to seek remedy. Section 14 of the Act deals with the jurisdiction, powers and authority of the C.A.T. and Section 20 thereof prescribes that ordinarily the Tribunal shall not admit an application unless it is satisfied that the applicant had availed of and exhausted all the remedies available to him under the relevant service rules, to redress his grievance. Serving a charge-sheet on an employee is one of the procedural steps which has to be undertaken by the disciplinary authority to complete the process of investigation by affording him due opportunity to defend the charges levelled against him. Delivering a charge-sheet to an employee may be a cause of concern to him, but in order to enable him to approach the Tribunal, it must necessarily ripen into a cause of action. In the disciplinary proceedings, ordinarily a cause of action arises only after the proceedings are completed and a final order is issued by the disciplinary authority on the basis of the finding arrived at in the enquiry. In the service rules applicable to the applicant, it has been prescribed as to what procedural step has to be taken by the disciplinary authority and what opportunities are available to the concerned employee to meet and defend the charges; hence, it cannot be said that merely on the serving of a charge-sheet to a Government employee; a cause of action arises to him to approach the Tribunal. In other words; any and every step or interlocutory order issued by the disciplinary authority before the issuance of a final order does not give a cause of action to the concerned employee to approach the Tribunal. One has to avail and exhaust all the remedies available to him under the rules governing his services before approaching the Tribunal.



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16. Even if, for argument sake, it is taken that the charges are vague or that they do not constitute a misconduct; if this Tribunal attempts to go into the truth or veracity of the charges levelled against the applicant and also to ascertain whether they do constitute a misconduct or not; it would definitely be over-stepping its jurisdiction. If it does so, it would amount to breaking of the judicial cordon. This is what the applicant appears to achieve through this original application. All ambiguities and uncertainties in such matters have been laid to rest by Hon'ble the Supreme Court by pronouncing the law in its latest decision in the case of The Deputy Inspector General of Police Vs. K.S.Swaminathan quoted earlier.

17. In view of the settled position of law, this Tribunal can neither analyse, nor evaluate the material placed on record with a view to find whether there is any material at all on the basis of which the charge-sheet (Annx.A/1) has been served up on the applicant. The other authorities cited and relied upon by the learned counsel for both the sides either deal with the aspect of misconduct or with the powers of the Tribunal to go into the veracity of the charges levelled against the applicant. They need no discussion as the facts therein have been distinguishable. Further; that would take us into the process of analysing and evaluating the materials on record, which cannot be done in view of the law laid down by Hon'ble the Supreme Court in the aforesaid decisions in the case of Upendra Singh and D.I.G. OPolice vs. K.S.Swaminathan. Moreover, the aspect of malafide of respondent No.3 against the applicant raised by the learned counsel for the applicant cannot also be gone into at this


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stage; since this aspect cannot be sorted out in isolation of allegations made in the charge-sheet against the applicant.

18. For all that has been ^{said} ~~stated~~ and discussed above, we are of the considered opinion that this Tribunal can neither interfere at this stage of the disciplinary proceedings which have been instituted against the applicant by virtue of charge-sheet dated 17.6.1996 (Annx.A/1), nor give any directions for other reliefs sought for in this O.A. The issue, raised herein is, therefore, answered in the negative. Consequently, this O.A. deserves rejection which is hereby rejected with no order as to costs. The Misc. Applications Nos. 225/95 and 582/95 which remained pending so far, also stand dismissed accordingly.

19. In the facts and circumstances of this case, we feel that the disciplinary enquiry initiated against the applicant in July, 1994 should be concluded early. We, therefore, direct that the respondents would expedite and conclude the disciplinary proceedings against the applicant within a period of six months from the date of receipt of a copy of this order.


(PATAN PRAKASH)
MEMBER(JUDICIAL)


(C.F. SHARMA)
MEMBER(ADMN.)