

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1664 OF 2017

New Delhi, this the 18th day of May, 2017

CORAM:

HON^oBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND

HON^oBLE MRS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER
í í í .

Kishor Kumar Goswami,

Aged 60 years,

s/o late Sh.Mahender Nath Goswami,

r/o F-2/29, Dayal Pur Extn.,

Delhi 110094

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Applicant

(By Advocate: Dr.Aswini Bhardwaj)

Vs.

1. Government of NCT of Delhi,
Through the Lt. Governor,
Raj Niwas, Rajpur Road,
New Delhi.

2. Principal Secretary,
Land & Building Department,
(Vigilance Branch),
B-Block, Vikas Bhawan,
New Delhi 110002

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Respondents

ORDER

Per Raj Vir Sharma, Member(J):

The applicant, who retired as Deputy Secretary (Ad hoc DANICS) on 31.12.2015, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- õa. QUASH Memorandum No.F.7/3/2014/DOV/15206 dt.21.12.2015, and
- b. DIRECT the respondents to treat all his suspension period as spent on duty and make the payment of all retirement benefits including gratuity etc. with all arrears of pension/pensionary benefits with all consequential benefits, and/or
- c. GRANT cost in favour of the Applicant and PASS any other or further order(s), in favour of the Applicant, which this Honøble Tribunal may deem fit, just & proper in the above mentioned facts & circumstances.ö

The applicant has also sought the following interim relief:

õIn the above mentioned facts & circumstances this Honøble Tribunal may kindly be pleased to STAY the Memorandum No. F.7/3/2014/DOV/15206 dt.21.12.2015 and the enquiry proceedings, during pendency of the O.A.ö

2. The Memorandum No. F.7/3/2014/DOV/15206, dated 21.12.2015, was issued by order and in the name of the Lt. Governor, Delhi, proposing to hold an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 and calling upon the applicant to submit, within 10 days of the receipt of the Memorandum, a written statement of his defence and also to state whether he desired to be heard in person. Statement of article of charge, statement of imputation of misconduct, list of documents by which, and list of witnesses by whom the article of charge framed against the applicant was proposed to be sustained, are reproduced below:

- (i) õSTATEMENT OF ARTICLE OF CHARGES framed against Sh. K.K.GOSWAMI, AD HOC DANICS, GOVT.OF NCT OF DELHI.
Article I

That the said Sh.K.K.Goswami, Adhoc DANICS, while functioning as Sub-Registrar (Seelampur) during the year 2011, committed grave misconduct in as much as he registered a forged WILL, with mala fide intention and ulterior motive, in respect of an immovable property situated in Panchsheel Enclave, New Delhi, in

violation of the provisions of the Registration Act, 1908 and instructions issued by the Revenue Department, GNCTD, New Delhi.

By the above acts of omission & commission, the aforesaid Sh.K.K.Goswami, Ad hoc DANICS exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

(ii) STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SH.K.K.GOSWAMI, AD HOC DANICS, GOVT. OF NCT OF DELHI.

A property bearing no.D-79, Panchsheel Enclave, New Delhi was owned by Sh.Ravi Dutt Gautam, who died at the age of about 80 years on 28/04/2011, without legal heir. After his demise, a forged WILL dated 29/03/2011 was allegedly prepared, showing Smt.Renu Joshi, resident of D-15, Indira Enclave, Sainik Farms, Delhi as sole beneficiary. The said WILL was unregistered at the time of the death of Sh.Ravi Dutt Gautam in April, 2011. The said WILL was registered by Sh.K.K.Goswami, the then Sub Registrar (Seelampur) on 27/05/2011, in violation of the provisions of Registration Act, 1908 and instructions contained in order no.F.1(31)/Regn./Div.Com./2002/129-130 dated 17/07/2002 and order no.F.1(31)/Regn./Div.Com./2002/165 dated 29/05/2003, issued by Inspector General of Registration, Revenue Department, GNCTD.

As per the aforesaid order dated 17/07/2002, the Sub-Registrars were directed to register the documents within their respective jurisdiction, except only in exceptional cases, where all the executants desire that an instrument is to be registered at a Sub Registrar office, other than the place where they are residing. The instructions/directions were reiterated by the Revenue Department vide aforesaid order dated 29/05/2003. In blatant violation of the aforesaid instructions/directions of the Revenue Department, the aforesaid Sh.K.K.Goswami, with mala fide intention and ulterior motive, registered the aforesaid WILL which is evident from the following facts:-

- i) The property bearing no.D-79, Panchsheel Enclave, New Delhi, was not in his territorial jurisdiction.
- ii) Sh.K.K.Goswami had passed/issued the order without any dispatch no. and date of registration of WILL.
- iii) As per Section 41 of Registration Act, 1908, before registering any document, including WILL, the Sub Registrar should be satisfied on the basis of documents submitted by the beneficiary as well as from the

statements of witnesses and beneficiary. However, although in the order for registration, passed by Sh.K.K.Goswami, the witnesses allegedly deposed before him that the WILL was executed and signed by late Sh.Ravi Dutt Gautam in their presence on 25/01/2011, but on the face of the WILL, it was shown executed on 29/03/2011, indicating that Sh.K.K.Goswami neither himself recorded the statements of witnesses nor cross-examined them about the truthfulness of their earlier statements. Sh.K.K.Goswami had not raised any question as to why the said WILL was not presented before SR-V(Mehrauli), when all the parties including the beneficiary Smt.Renu Joshi and the witnesses, namely, S/Shri Aditya Kumar Bhandari and Yugal Kishore Sharma, as well as the property in question i.e. D-79, Panchsheel Enclave, New Delhi were residing/situated in the jurisdiction of Sub Registrar (Mehrauli). Furthermore, the said property no.D-79, Panchsheel Enclave, New Delhi was in the name of Smt.Satya Devi Gautam and not in the name of Sh.Ravi Dutt Gautam.

- iv) In the deed related details, Sh.K.K.Goswami mentioned that the document of WILL was presented by Smt.Renu Joshi in his office on 27/05/2011 and on the same day, it was registered vide Registration No.542 in Book NO.3 Volume 3482 on page 26 to 27, but in his undated/without dispatch number order, Sh.K.K.Goswami mentioned that the said WILL was submitted in his office on 23/05/2011. Besides it, when any WILL is presented before the Sub Registrar, the details of the same are required to be entered into the Delhi Online Registration Information System (DORIS), but Sh.K.K.Goswami did not enter the same in DORIS.
- v) The copy of the order is required to be sent by registered post at the residence of beneficiary, but this practice was not followed, and no such record was maintained about the delivery of the said order to the beneficiary.

An FIR No.01/2013 dated 24/01/2013 was registered by PS-ACB, GNCTD u/s 13(1)(d) of POC Act, 1988, r/w section 420, 467, 468 and 120-B IPC.

By the above acts of omission & commission, the aforesaid Sh.K.K.Goswami exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt.

servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.ö

(iii) LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SH.K.K.GOSWAMI, AD HOC DANICS, GOVT. OF NCT OF DELHI, ARE PROPOSED TO BE SUSTAINED.

1. Copy of FIR No.01/2013 dated 24/01/2013, PS-ACB, GNCTD.
2. Copy of WILL dated 29/03/2011 executed by late Sh.Ravi Dutt Gautam in favour of Smt. Renu Joshi in respect of property bearing no.D-79, Panchsheel Enclave, New Delhi-110017, along with affidavit/declaration made by the witnesses S/Sh.Aditya Kumar Bhandari, Yugal Kishore and Smt. Renu Joshi.
3. Copy of undated order no.SR-IV/S.Pur/DC/NE/2011 passed by Sh.K.K.Goswami, former Sub Registrar (Seelampur).
4. Copy of order no.F.1(31)/Regn./Div.Com./2002/129-130 dated 17/07/2002 issued by Inspector General of Registration, Revenue Department, GNCTD.
5. Copy of order no.F.1(31)/Regn./Div.Com./2002/165 dated 29/05/2013 issued by Inspector General of Registration, Revenue Department, GNCTD.
6. Copy of statements dated 24/01/2013 & 31/01/2013 of Sh.D.S.Rawat, the then Sub Registrar (Seelampur).
7. Copy of statement dated 28/01/2013, 29/01/2013 & 07/02/2013 of Sh.Rameshwar, the then Sub Registrar-V(Mehrauli).
8. Copy of statements dated 28/01/2013 & 31/01/2013 of Sh.Sanjeev Kumar, the then E-Sub-Registrar-VA (Mehrauli).
9. Copy of complaint dated 14/12/2012 made by Sh.Parmil Mittal, R/o 514, Vivekanand Nagar, Delhi-52.
10. Copy of death certificate dated 18/05/2011 of late Sh.Ravi Dutt Gautam.
11. Copy of FSL report no.FSL.2013/D-6278 dated 25/11/2013.
12. Copy of the letter dated 14/05/2011 of Smt. Renu Joshi, submitted in the office of Sub Registrar (Seelampur).ö

(iv) LIST OF WITNESSES BY WHOM ARTICLE OF CHARGE FRAMED AGAINST SH.K.K.GOSWAMI, AD HOC DANICS, GOVT. OF NCT OF DELHI, ARE PROPOSED TO BE SUSTAINED.

1. Inspector Pankaj Sharma, Anti Corruption Branch, GNCTD.
2. Inspector Sushil Kumar, Anti Corruption Branch, GNCTD
3. Sh.D.S.Rawat, the then Sub-Registrar (Seelampur)
4. Sh.Rameshwar, the then Sub Registrar V (Mehrauli)

5. Sh.Sanjeev Kumar, the then E-Sub Registrar-VA(Mehrauli).
6. SDM(HQ), Revenue Department, 5, Sham Nath Marg, Delhi-54
7. Dr.Virender Singh, Assistant Director (documents), Forensic Science Laboratory, GNCTD, Madhuban Chowk, Rohini, Delhi.
8. Present Sub-Registrar (Seelampur), GNCTD.
9. Sh.Bijender Singh, Asst. Sub Inspector, No. 2573/N(PIS No.28820701), Anti Corruption Branch, GNCTD.ö

3. The applicant submitted the written statement of his defence on 18.1.2016 denying the charge, and praying for dropping of the charge levelled against him, vide Memorandum no.F.7/3/2014/DOV/15206, dated 21.12.2015, and for payment of all retiral benefits, arrears of pay and allowances, etc.

4. The applicant has contended, inter alia, that neither the charge has been dropped nor has the Inquiring Authority been appointed by the respondents till date. The impugned charge memo has been issued by the respondents on 21.12.2015, i.e., ten days prior to the date of his retirement, to harass him in an illegal, unjust and arbitrary manner. The impugned charge-sheet, read with its supporting imputations, does not disclose any misconduct to have been committed by him.

5. During the course of hearing on the question of admission of the O.A., Dr.Aswini Bhardwaj, the learned counsel appearing for the applicant, drew our attention to certain comments given by the Sub-Registrar-IV, Seelampur, and the order passed by the Honøble Lt. Governor on 28.6.2016 declining sanction for prosecution of the applicant. It was submitted by Dr.Aswini Bhardwaj that when the Honøble Lt.Governor refused to accord sanction for prosecution of the applicant in the same

matter, it could hardly be said that the applicant committed any misconduct. Dr.Aswini Bhardwaj also submitted that the acts of omission, if any, on the part of the applicant were a mere error of judgment, and, therefore, no misconduct can be said to have been committed by the applicant. In support of this submission, Dr.Aswini Bhardwaj relied on the decision of the Honøble Supreme Court in the case of **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others**, (2007) 4 SCC 566, wherein their Lordships, in paragraphs 10 to 12, observed thus:

õ10. In *State of Punjab and Ors. vs. Ram Singh Ex. Constable* [1992 (4) SCC 54], it was stated:

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.'

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officeholder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

11. In *P. Ramanatha Aiyar's Law Lexicon, 3rd edition*, at page 3027, the term 'misconduct' has been defined as under:

"The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

[See also *Bharat Petroleum Corpn. Ltd. vs. T.K. Raju*, [2006 (3) SCC 143].

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. *In Union of India & Ors. vs. J. Ahmed* (1979 (2) SCC 286), whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster*, 17 Q.B. 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)*, 1959 1 WLR 698]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*, (61 Bom LR 1596), and *Satubha K. Vaghela v. Moosa Raza* (10 Guj LR 23). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

6. We have given our thoughtful consideration to the facts and circumstances of the case and the contentions raised by the applicant. The charge against the applicant is that while functioning as Sub-Registrar, Seelampur, during the year 2011, he committed grave misconduct in as much as he registered a forged WILL, with mala fide intention and ulterior motive, in respect of an immovable property situated in Panchsheel Enclave, New Delhi, in violation of the provisions of the Registration Act, 1908 and instructions issued by the Revenue Department, GNCTD, New Delhi. After perusing the materials placed before us by the applicant, we are unable to accept the contention of the applicant that the impugned charge sheet read with its supporting imputations does not disclose any misconduct. At the stage of issuance of the charge sheet, the Tribunal has no jurisdiction to go into the correctness or truth of the charge. In the very same order dated 28.6.2015, to which our attention was invited by Dr. Aswini Bhardwaj, the Lt. Governor, Delhi, i.e., the Disciplinary Authority, clearly observed that "Disciplinary Proceedings, underway on the administrative side, may continue as per CCS (CCA) Rules, while declining sanction for prosecution of the applicant. When by order and in the name of the Lt. Governor of Delhi, the impugned charge sheet has been issued against the applicant, we do not find any substance in the contention of the applicant that sanction for his prosecution having been refused by the Lt. Governor of Delhi, the

impugned charge memo has been issued and the disciplinary proceeding has been initiated against him to harass him in an illegal, unjust and arbitrary manner. Whether, or not, the acts of omission on the part of the applicant were a mere error of his judgment has to be determined by the statutory authorities in the impugned disciplinary proceedings. The Tribunal cannot take over the functions of those statutory authorities. Since the applicant has already submitted the written statement of his defence in response to the impugned charge memo dated 21.12.2015, the Disciplinary Authority has to consider the grounds urged by the applicant therein and to take a decision as to whether or not the inquiry has to be held. In the above view of the matter, the impugned charge sheet does not give rise to any cause of action, and the O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, is premature. This view of ours is fortified by the following decisions of the Honøble Supreme Court:

(i) **Union of India vs. Upendra Singh**, (1994)3 SCC 357, wherein the Tribunal stayed a charge sheet issued to the respondent who was an Inspecting Assistant Commissioner of Income Tax for lax and undue favour to a group of assesseees. The power of the authority to issue charge sheet was challenged on the ground that the respondent was performing quasi judicial functions and he could not, therefore, be charge-sheeted for his duties. On appeal, the matter was remanded to the Tribunal, but this time the Tribunal quashed the charge-sheet after going into the correctness of the charges and holding that the charges do not indicate any corrupt motive or culpability on

the part of the respondent. The Hon'ble Supreme Court quashed the order of the Tribunal and set out the law, thus:

õ6. In the case of charges framed in a disciplinary enquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or 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 charge is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of their disciplinary proceedings, if the matter comes 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 í í "

(ii) **District Forest Officer Vs. R. Rajamanickam and another,** 2000 SCC (L&S)1100, wherein the Hon'ble Supreme Court, after placing reliance on the judgment of **Upendra Singh (Supra)** annulled the Tribunal's decision which quashed the charge-sheet and held that the interference with the charge sheet is possible only where the charge-sheet read with its supporting imputations does not disclose any misconduct, and not on the ground that the alleged misconduct is not probable to have been committed by the delinquent. Truth or falsity of the charges does not give jurisdiction to interfere.

(iii) **H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal vs. M/s Gopinath & Sons,** 1992 Supp.(2)SCC312,

wherein the Hon'ble Supreme Court highlighted the scope of judicial review of charge-sheet and held as under:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.ö

(iv) **State of Punjab vs. V.K.Khana**, AIR 2001 SC 343: (2001) 2 SCC 33, wherein the Hon'ble Apex Court, in paragraph-33 of the judgment, held as follows:

"While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the

issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings".

(v) **Union of India and another Vrs. Kunisetty Satyanarayana**, A.I.R. 2007 SC 906, wherein the Honøble Supreme Court in paragraphs 14 and 15 of the judgment, held as follows:

õ14. The reason by ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge- sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause or charge sheet".

(vi) **Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha**, AIR 2012 SC 2250, wherein after having a survey of its earlier decisions, the Honøble Supreme Court has held thus:

õ9. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issued by filing a representation and wait for the decision of the

disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstances (Vide: **The State of Madhya Pradesh v. Bani Singh & Anr.**, AIR 1990 SC 1308; **State of Punjab & Ors. V. Chaman Lal Goyal**, (1995) 2 SCC 570; **Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey & Ors.**, (1995) 3 SCC 134: (1995 AIR SCW 3028); **Union of India & Anr. V. Ashok Kacker**, 1995 Supp(1) SCC 180; **Secretary to Government, Prohibition & Excise Department v. L. Srinivasan**, (1996) 3 SCC 157; **State of Andhra Pradesh v. N. Radhakishan**, AIR 1998 SC 1833; **Food Corporation of India & Anr. v. V.P.Bhatia**, (1998) 9 SCC 131; **Additional Supdt. Of Police v. T.Natarajan**, 1999 SCC (L & S) 646; **M.V.Bijlani v. Union of India & Ors.**, AIR 2006 SC 3475; **P.D.Agrawal v. State Bank of India & Ors.**, AIR 2006 SC 2064; and **Government of A.P. & Ors. v. V. Appala Swamy**, (2007) 14 SCC 49) : (AIR 2007 SC (Supp) 587).

10. In **Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury**, (2009) 7 SCC 305 : (AIR 2009 SC 2925), this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue.

11. Ordinarily, a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the

punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : **State of U.P. v. Brahm Datt Sharma**, AIR 1987 SC 943; **Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & ors.** (1996) 1 SCC 327 : (AIR 1996 SC 691) ; **Ulagappa & Ors. v. Div. Commr., Mysore & Ors.**, AIR 2000 SC 3603 (2); **Special Director & Anr. v. Modh. Ghulam Ghouse & Anr.**, AIR 2004 SC 1467; and **Union of India & Anr. v. Kunisetty Satyanarayana**, AIR 2007 SC 906).

12. In **State of Orissa & Anr. v. Sangram Keshari Mishra & Anr.**, (2010) 13 SCC 311: (2010 AIR SCW 6948), this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also: **Union of India & Ors. v. Upendra Singh**, (1994) 3 SCC 357) : (1994 AIR SCW 2777).

13. Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.ö

7. Furthermore, as the impugned charge memo 21.12.2015 was issued and the disciplinary proceedings were initiated/pending against the applicant as on the date of his retirement, i.e., 31.12.2015, the respondents cannot be said to have acted unjustifiably in withholding the release of the retirement benefits of the applicant as per rules, and in not treating his

suspension period as spent on duty. Therefore, no direction can be issued by the Tribunal to the respondents to treat the suspension period of the applicant as spent on duty and to make payment of all the retirement benefits including gratuity, etc, with all arrears of pension/pensionary benefits.

8. However, considering the grievance of the applicant that after filing of the written statement of defence by him on 18.1.2016 in response to the impugned charge memo dated 21.12.2015, no decision has yet been taken by the Disciplinary Authority either to hold the inquiry or to drop the charge, and that Inquiring Authority has not been appointed by the Disciplinary Authority, we are of the view that the ends of justice would be met if the respondents are directed to consider the applicant's written statement of defence and take appropriate decision within a period of thirty days from today, in the event the Disciplinary Authority has not already considered the applicant's written statement of defence, and has not already taken a decision for holding of the inquiry and has not already appointed the Inquiring Authority to hold the inquiry. It is ordered accordingly.

9. With the above observation and direction, the O.A. is dismissed at the stage of admission itself.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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