

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 4415 OF 2015

New Delhi, this the 25th day of April, 2017

CORAM:

HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBMER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
í í ..

Virender Singh Chankot,
Aged 55 years,
s/o Shri Jaidrath,
R/o WZ-1090J, Basai Darapur,
New Delhi-110015
(Presently working as AAO/DDO, o/o Director, CSMRS,
Ministry of Water Resources, New Delhi) í í í Applicant

(By Advocate: Shri K.L.Manhans)

Vs.

1. Union of India through Secretary,
Ministry of Urban Development,
Department of CPWD,
Nirman Bhawan,
New Delhi 110001
2. Controller General of Accounts,
Ministry of Finance, Department of Expenditure,
GOI,
New Delhi 110001
3. Director, Central Soil & Material Research Station(CSMRS),
Ministry of Water Resources, Hauz Khas,
New Delhi 110016 í í í í í Respondents
(By Advocate: Shri G.S.Virk)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- õ(i) To quash and set aside the impugned Memorandum of Charge/Chargesheet dated 2.9.2015(A1) as well as all the orders passed in consequence thereof which affect the career of the applicant adversely.
- (ii) To direct the respondents to allow all the consequential benefits to the applicant including the legitimate promotion to the post of PAO from the date of promotion of his immediate junior as per gradation list and allow posting to the applicant in any Central Ministry/Department at New Delhi by virtue of his seniority in his cadre.
- (iii) To pass any other order(s)/direction(s) as deemed proper in the circumstances of the case to meet the ends of justice.
- (iv) To award the applicant the cost of this litigation.õ

2. Brief facts of the applicant's case are as follows:

2.1 The applicant had worked as Assistant Accounts Officer/Divisional Accountant in the office of the Executive Engineer, Central Public Works Department (CPWD), Karnal Central Division, during the period from 10.2.2004 to 9.5.2007.

2.2 During November-December 2004, the Executive Engineer, CPWD, Karnal Central Division, had invited tenders for the construction work õC/o Main Institute Building Residential Quarters, Electrical Sub Station & Enquiry Office for IHM Kurukshetra I/c Water Supply, Sanitary

Installation, Drainage, Electrical Installations & Fire Alarm.ö The sealed tenders were opened by the said Executive Engineer on 24.1.2005 in the presence of all concerned. The opened tenders were handed over to Shri R.P.Dua, UDC, the subordinate working under the applicant, on 25.1.2005 in the afternoon for checking them and preparing a comparative statement for further action.

2.3 While doing the assigned task under the direct orders of the said Executive Engineer with the assistance of his colleagues S/Shri Jai Singh, UDC and Harsh Jain, LDC and the Computer Operator, on 25.1.2005 Shri R.P.Dua, UDC, found four pages missing from the tender of Mr. Raja Ram, Contractor, and made a report of the same to the said Executive Engineer on 27.2.2005. Shri R.P.Dua further in his letter dated 17.3.2005 to the said Executive Engineer stated in detail that a number of Contractors were around him in the office between 24.1.2005 and 28.1.2005 when he was doing the task of preparing comparative statement by keeping the documents in his custody under the orders of the Executive Engineer.

2.4 The said Executive Engineer, vide his letters dated 24.3.2005 and 30.3.2005, sought for explanation from the applicant. The applicant, vide his letters dated 17.3.2005 and 30.3.2005, explained the factual position. Considering the explanation given by the applicant, the Executive Engineer decided not to pursue the matter further against the applicant and closed the same.

2.5 After a considerable lapse of time, the Executive Engineer lodged an FIR at Civil Lines Police Station, Karnal, against one of the tenderers, Mr. Satish Kumar Gupta, for allegedly tampering with the tender documents of Mr. Raja Ram, Contractor, whose tender was accepted and to whom the contract was awarded.

2.6 After a silence of about 11 years from the date of occurrence of the alleged incident in January 2005, respondent no.2 served on applicant a charge memo dated 2.9.2015, when he was due for his next promotion to the level of Pay & Accounts Officer in his cadre. The charge levelled against him related to the aforesaid missing of four pages from the tender of Mr. Raja Ram, Contractor.

2.7 After issuance of the said charge memo, the respondent no.2 issued promotion orders of a number of juniors of the applicant on 27.11.2015, ignoring the claim/rights and interest of the applicant, ostensibly on the pretext of the said charge memo being issued to him.

2.8 The applicant, vide his representation/written statement of defence dated 30.11.2015, brought the detailed facts and circumstances relating to the aforesaid incident of missing of four pages from the tender of Mr. Raja Ram, Contractor, to the notice of respondent no.2 and submitted that the charge levelled against him is baseless, fabricated, biased and malicious and is, therefore, liable to be dropped. Soon thereafter, the applicant filed the present O.A. seeking the reliefs as aforesaid.

3. It has been contended by the applicant that there has been inordinate and unexplained delay of about 11 years in issuing the impugned charge memo. No misconduct is attributable to him. He has been made a scapegoat by the said Executive Engineer deliberately to divert the attention from the misdeeds of self and the Shri R.P.Dua, UDC. No action has been taken against the Shri R.P.Dua, UDC and the Executive Engineer, Mr.S.S.Washist, who retired from service on 31.3.2015. The impugned charge memo does not contain the details regarding the occurrence of the alleged incident. The copies of the documents mentioned in the list of documents appended to the charge memo have not been served on him. Shri S.S.Washist, cited at sl.no.1 of the list of witnesses appended to the charge memo, has ceased to be in service after 31.3.2015. The charge memo has not been approved by the competent authority. The Executive Engineer did not hand over the tender documents to the applicant and preferred to give them to the custody of Shri R.P.Dua, U.D.C, because unlike the applicant, the latter was the regular employee of his office. There was a definite nexus/connivance between the Executive Engineer and the said Shri R.P.Dua, UDC, as indicated in the complaint dated 28.2.2007 of Shri Satish Kumar Gupta, whose tender was rejected by the said Executive Engineer. The Executive Engineer, after considering his explanation, had taken a conscious decision not to pursue the matter further against the applicant. In view of the statements made by Shri R.P.Dua, U.D.C., in his replies dated

17.2.2005 and 17.3.2005, no misconduct can be said to have been committed by him. It is, thus, submitted by the applicant that the impugned charge memo and the actions taken by the respondents are highly unconstitutional, illegal, malicious, biased, and arbitrary and are liable to be set aside.

4. Resisting the O.A., the respondents have filed a counter reply. The respondents have refuted the statement made by the applicant that the Executive Engineer, CPWD, Karnal Central Division, had decided not to pursue the matter further against him and had closed the matter. It has been stated by the respondents that the said Executive Engineer had sent the report about the removal of four pages from the tender of Mr. Raja Ram, Contractor, to the concerned Superintending Engineer and Chief Engineer, C.P.W.D, Chandigarh. The said Executive Engineer had also lodged F.I.R. dated 1.4.2005 at the Civil Lines Police Station, Karnal, in connection with the incident, without naming anybody as culprit. The complaint received from Mr. Satish Kumar Gupta had been forwarded to the Vigilance Unit of the C.P.W.D. by the Central Vigilance Commission, vide O.M. dated 3.4.2007, for furnishing the Action Taken Report (ATR) to the Commission. The ATR was submitted to the Central Vigilance Commission, vide letter dated 11.11.2009, wherein it was intimated that detailed investigation had to be conducted into the allegation of tampering with the tender documents of Mr. Raja Ram, Contractor. The Central Vigilance Commission, vide O.M. dated 22.12.2009, had directed the Vigilance Unit of the CPWD to furnish

the investigation report to the Commission. After preliminary inquiry was conducted, the Vigilance Unit of the C.P.W.D., vide letter dated 15.1.2015, submitted the investigation report to the Central Vigilance Commission. The charge memo was issued against the applicant after conducting a preliminary inquiry and obtaining the first stage advice of the Central Vigilance Commission, vide O.M. dated 20.3.2015. As per paragraph 18.3.16.1 of the CPWD Work Manual 2003, the Divisional Accountant is responsible for the safe custody of tender documents during the period when they remain in the Accounts Branch until submission to the Executive Engineer. The applicant was responsible for the safe custody of the tender documents during the scrutiny stage, but he failed to ensure the same. The applicant also failed to take action in accordance with the provisions of the CPWD Work Manual. The respondents have also stated that statements of article of charge, and of imputations of misconduct clearly and precisely describe the incident and the misconduct alleged to have been committed by the applicant. All documents, as requested by the applicant, vide his letter dated 21/22.9.2015, have been supplied to him. The Joint Controller General of Accounts, office of the Controller General of Accounts, Lok Nayak Bhawan, Khan Market, New Delhi, is the competent authority to initiate disciplinary action against the applicant. After obtaining the approval of the said competent authority, the charge memo dated 2.9.2015 has been issued to the applicant. The Central Vigilance Commission, vide its O.M. dated

20.3.2015, has advised for issuance of recordable warning to Shri S.S.Washisht, the then Executive Engineer (retired on 31.3.2015) and for initiation of major penalty proceedings against the applicant and Shri R.P.Dua, UDC, CPWD. The applicant was considered by the DPC held on 9.4.2015 for promotion to the post of Accounts Officer for the vacancy year 2015-16. Though the junior of the applicant was promoted vide O.M. dated 27.11.2015, he could not be promoted as charge sheet was issued against him on 2.9.2015. Hence, the case of the applicant was deemed to have been placed under sealed cover in terms of DoP&T's O.M. dated 14.9.1992 which, *inter alia*, states that a Government servant who is recommended for promotion by the DPC but in whose case the charge sheet is issued after the recommendations but before he is actually promoted will be considered as if his case has been placed under the sealed cover, and he shall not be promoted unless he is completely exonerated of the charges against him.

5. In his rejoinder reply, the applicant has more or less reiterated the same averments and contentions.

6. We have carefully perused the records, and have heard Mr.K.L.Manhans, the learned counsel appearing for the applicant, and Mr.G.S.Virk, the learned counsel appearing for the respondents.

7. During the course of hearing, Mr.K.L.Manhans, the learned counsel appearing for the applicant, made the following submissions:

- (1) The article of charge is incomplete, vague, sketchy and deficient in details relating to the alleged misconduct of the applicant and has been drafted defectively in violation of sub-rules (3) and (4) of Rule 14 of the CCS (CCA) Rules, 1965. Therefore, the impugned charge memo is unsustainable and liable to be quashed.
- (3) In view of the statements made by Shri R.P.Dua, the UDC, in his letters dated 28.1.2005, 17.2.2005 and 17.3.2005 that the tender documents were given to him, the applicant cannot be said to be the custodian of the tender documents, and the removal of four pages from the tender documents cannot be attributable to the applicant. Therefore, the charge is baseless and fabricated and is liable to be quashed.
- (2) There has been inordinate delay of 11 years in issuing the charge memo against the applicant. In view of the law laid down by the Honøble Supreme Court in **State of Madhya Pradesh v. Bani Singh & Anr.**, AIR 1990 SC 1308, the charge memo is unsustainable and liable to be quashed.

7.1 On 7.3.2015 the hearing was closed and the order was reserved. On 8.3.2015, Mr.K.L.Manhans filed copies of the following judgments/case-laws and certain circulars in support of his contentions:

- (1) **State of Andhra Pradesh Vs. N.Radhakrishnan**, JT 1998(3) SC 123;

- (2) **State of Punjab and others Vs. Chaman Lal Goyal**, (1995) 2 SCC 570;
- (3) **P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board**, Civil Appeal No.4901/2005, decided on 8.8.2005;
- (4) **M.V.Bijlani Vs. Union of India & others**, (2006) 5 SCC 88;
- (5) **Secretary, Forest Department Vs. Abdul Rasul Chowdhury**, (2009) 7 SCC 305;
- (6) **Govt. of A.P. & others Vs. V.Apala Swamy**, (2007) 14 SCC 49;
- (7) **Food Corporation of India Vs. V.P.Bhatia**, (1998) 9 SCC 380;
- (8) **Agyakar Singh Vs. P.S.E.B.**, 2009(1) SCT 709;
- (9) **State of Uttar Pradesh Vs. Mohd. Sherif**, 1982(2)SLR SC 265=AIR 1982 SC 937;
- (10) **Anil Gilurkar Vs. Bilaspur Raipur Kshetriya Gramin Bank and Anr.**, JT 2011(10) SC 373;
- (11) **State of Uttar Pradesh and others Vs. Saroj Kumar Sinha**, (2010) 2 SCC 772;
- (12) **Laxmi Devi Vs. Union of India & Ors**, AISLJ VII-2016(2) 480 (CAT);
- (13) **Union of India Vs. S.C.Goel**, AIR 1964 SC 364;
- (14) **Man Singh Vs. State of Haryana & ors**, Civil Appeal No.3186/2008, decided on 1.5.2008;
- (15) Government of India's circular dated 23.5.2000 issued by the Central Vigilance Commission; and
- (16) Government of India's circular dated 29.11.2012 issued by the Department of Personnel & Training.

8. *Per contra*, Mr.G.S.Virk, the learned counsel appearing for the respondents, submitted that after receiving the charge memo dated 2.9.2015, the applicant made a representation dated 30.11.2015 explaining the facts and circumstances of the case and requesting the disciplinary authority to drop the charge. Soon after making the said representation dated 30.11.2015, the applicant filed the present O.A. on 2.12.2015. As regards the delay, Mr.G.S.Virk submitted that the matter remained in correspondence and

delay, if any, was due to administrative reasons which have been fully explained in the counter reply.

8.1 On 8.3.2017, Mr.G.S.Virk also filed copies of the following judgments/case-laws in support of the case of the respondents:

- (1) **Union of India Vs. Ashok Kacher**, 1995 Supp.(1) SCC 180;
- (2) **Union of India Vs. Upender Singh**, JT 1994 (1) SC 658;
- (3) **Dy.Inspector General of Police Vs. K.S.Swaminathan**, (1996) 11 SCC 498;
- (4) **Govt. of Andhra Pradesh Vs. V.Appala Swamy**, (2007) 14 SCC 49;
- (5) **The Secretary, Ministry of Defence Vs. Prabhash Chandra Mirdhan**, Civil Appeal No.2333 of 2007;
- (6) **Secretary to Government, Prohibition & Excise Department Vs. L.Srinivasan**, (1996) 3 SCC 157;
- (7) **Balkrishna Namdeo Katkade Vs. State of Maharashtra**, 2008(2) MhLJ 448;
- (8) **Union of India Vs. Anil Puri**, W.P.(C) No.9493 of 2009, decided by Honøble High Court of Delhi on 30.8.2010;
- (9) **Secretary, Forest Department & Ors. Vs. Abdur Rasul Chowdhury**, (2009) 7 SCC 305;
- (10) **State of Punjab & Ors. Vs.Chaman Lal Goyal**, (VII)1995 AISLJ 126; and
- (11) **Food Corporation of India Vs. V.P.Bhatia**, JT 1998 (8) SC 16.

9. We have carefully perused the judgments relied on by the learned counsel appearing for the parties.

10. The statement of Article of Charge, statement of imputations of misconduct, list of documents, and list of witnesses, which were enclosed with the charge memo dated 2.9.2015 issued to the applicant, are reproduced below:

(i) STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SH.VIRENDER SINGH CHANKOT, AAO.

Sh.Virender Singh Chankot, AAO, while working as AAO in Karnal Central Division, CPWD, Karnal in respect of tendering for the work C/o Main Institute Building Residential Quarters, Electrical Sub-Station & Enquiry Office for IHM Kurukshetra I/c Water Supply, Sanitary Installation, Drainage, Electrical Installations & Fire Alarm has committed the following irregularities/lapses.

ARTICLE-I

Tender of M/s Raja Ram, Contractor for the work C/o Main Institute Building Residential Quarters, Electrical Sub-Station & Enquiry Office for IHM Kurukshetra I/c Water Supply, Sanitary Installation, Drainage, Electrical Installations & Fire Alarm was tampered by way of removing four pages while the tenders were under scrutiny in the accounts branch of Karnal Central Division, CPWD, Karnal and thus by not ensuring the safe custody of the tender documents, during the computation and preparation of comparative statement in accounts branch the said Sh.Virender Singh Chankot, AAO has violated the CPWD works manual 2003 para 18.3.16.1.

Thus, by his above acts, the said Sh.Virender Singh Chankot, AAO committed grave misconduct, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening rule 3(1)(i)(ii) & (iii) of Central Civil Services (Conduct) Rules, 1964.

(ii) STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SH.VIRENDER SINGH CHANKOT, AAO.

ARTICLE-I

C/o Main Institute Building Residential Quarters, Electrical Sub-Station & Enquiry Office for IHM Kurukshetra I/c Water Supply, Sanitary Installation, Drainage, Electrical Installations & Fire Alarm has committed the following irregularities:-

As per CPWD works manual 2003 para 18.3.16.1 "The Divisional Accountant is responsible for the safe custody of tender documents during the period when they remain in the Accounts branch until submission to the Executive Engineer."

Sh.Virender Singh Chankot, AAO was responsible for the safe custody of the tender documents during the scrutiny stage and he has failed to ensure the same. Thus the action of

the said Sh.Virender Singh Chankot, AAO is in contravention to the aforesaid manual provision.

Thus, by his above acts, the said Sh.Virender Singh Chankot, AAO committed grave misconduct, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening rule 3(1)(i),(ii) & (iii) of Central Civil Services (Conduct) Rules, 1964.ö

(iii) öLIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGE FRAMED AGAINST SH.VIRENDER SINGH CHANKOT, AAO ARE PROPOSED TO BE SUSTAINED.

1. Report of Sh.R.P.Dua dtd.28.01.2005 to EE, KCD, Karnal.
2. EE, KCD letter no.9(1)/KcO/245 dated 28.01.2005
3. EE, KCD letter no.54(415)/KCD/AB/22 dated 01.02.2005
4. CE(NZ-I) U.O.no.17(3)/2005/A&C/56 dated 17.03.2005
5. Reply of R.P.Dua dtd.17.03.2005.ö

(iv) öLIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGES FRAMED AGAINST SH.VIRENDER SINGH CHANKOT, AAO IS PROPOSED TO BE SUSTAINED

1. Sh.S.S.Washist, Superitending Engineer, Jalandhar, Central Circle, CPWD.
2. Sh.Vijay Kumar Jha, EE, Vigilance Unit, CPWD.ö

11. In reply to the impugned charge memo dated 2.9.2015, the applicant submitted written statement of his defence on 30.11.2015, wherein he has narrated in detail the incident and has pleaded his innocence. He has also raised the point of delay in issuance of the charge memo.

12. After going through the statement of Article of Charge, statement of imputations of misconduct, and the applicant's written statement of defence, we do not find any substance in the submission of Mr.K.L.Manhans, the learned counsel appearing for the applicant, that the article of charge is incomplete, vague, sketchy and deficient in details relating to the alleged misconduct of the applicant.

13. Paragraph 18.3.16.1 of the CPWD Works Manual 2003 stipulates that the Divisional Accountant is responsible for the safe custody of tender documents during the period when they remain in the Accounts Branch until submission to the Executive Engineer. The sum and substance of the charge levelled against the applicant is that he failed to discharge his responsibility as Divisional Accountant/Assistant Accounts Officer to ensure safe custody of the tender documents during the scrutiny stage in accordance with the Paragraph 18.3.16.1 of the CPWD Works Manual 2003 inasmuch as four pages were found missing from the tender documents of the Contractor, Mr. Raja Ram, when the said tender documents remained in the Accounts Branch headed by him. Therefore, the handing over of the tender documents by the Executive Engineer to Shri R.P.Dua, UDC, who was working under the applicant, did not absolve the applicant of his responsibility to ensure safe custody of the tender documents. Furthermore, as per the advice of the Central Vigilance Commission, major penalty disciplinary proceeding has also been taken against Shri R.P.Dua, UDC, and recordable warning has been issued against the concerned Executive Engineer. In this above view of the matter, we do not find any substance in the second contention of Mr.K.L.Manhans, the learned counsel appearing for the applicant.

14. In **Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha**, AIR 2012 SC 2250, after having a survey of its earlier

decisions (most of which have been relied on by the learned counsel for the parties in support of their respective contentions in the present case) 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

15. The incident of removal/missing of papers from the tender documents of the Contractor took place when they remained in the Accounts Branch headed by the applicant. No person other than the persons working in the Accounts Branch, including the applicant as Divisional Accountant, can be held responsible for the incident. Under the provisions of the General Financial Rules, such type of incident has to be reported by the concerned officer to the highest authority of the Department/Organization, and an FIR has also to be lodged by the concerned officer with the police for investigation and bringing the culprit/culprits to book. Disciplinary action has also to be taken against the officer/official/officials responsible for the safe custody of the tender documents. In the instant case, the complaint was lodged by the Executive Engineer at the jurisdictional police station, and FIR was registered by the police under Sections 418, 426 and 466 of the Indian Penal Code. The applicant has not shown before us that prejudice has been caused to him because of the delay in issuance of the charge memo initiating disciplinary proceedings against him. After having considered the facts and circumstances of the case in the light of the decision of the Honøble Supreme Court in **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha** (supra), we have found no substance in the third submission of Shri K.L.Manhans, the learned counsel appearing for the applicant.

16. No other point worth consideration has been urged or pressed by the learned counsel for the parties.

17. In the light of our above discussions, we have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by him in the O.A. The O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

AN