

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00204/2018 Date of order:- 23.2.2018

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Anil Dhamija s/o Sh. G.L.Dhamija, working as Executive Engineer, Electricity OP Division No.4, U.T.Chandigarh.

.....Applicant.

(By Advocate :- Mr. Rohit Seth)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi.
2. Union Territory, Chandigarh through its Administrator, Sector 9, U.T. Chandigarh.
3. Union Territory Chandigarh through its Advisor, Sector 9, U.T. Chandigarh.
4. Finance Secretary cum Secretary Engineering Department, U.T. Secretariat, Sector 9, U.T. Chandigarh.
5. Chief Engineer, Engineering Department, U.T. Civil Secretariat, Sector 9, Chandigarh.
6. Sh. Narinder Kumar Wadhwa (IAS Retd.) Inquiry Officer, r/ H.No. 563, Sector 2, Panchkula.

...Respondents

O R D E R

Sanjeev Kaushik, Member (J):

Should this Tribunal in exercise of its jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, stultify the proceedings of disciplinary enquiry at the threshold by quashing the charge-sheet ? This is the question which arose for determination in the present petition which has been filed for quashing the

charge-sheet dated 9.11.2016 (Annexure A-2) and letter dated 15.2.2018 (Annexure A-1) whereby the respondents after considering the reply to the charge-sheet decided to proceed in the enquiry proceedings.

2. Mr. Seth, learned counsel for the applicant, took us to the averments made in the O.A. and submitted that the impugned charge-sheet be set aside on the grounds taken in the O.A. To substantiate his above plea, he submitted that vague charges have been levelled against the applicant without disclosing the alleged misconduct or dis-honesty. He further urged that the impugned order dated 15.2.2018 be quashed being non-speaking as it does not disclose the reasons for not found favour with the submissions made by the applicant in reply to the charge-sheet and have not recorded positive finding about misconduct. Thus, he argues that in absence of reason, the order cannot sustain. To buttress his aforementioned plea, he placed reliance on the following judgments:-

- i) S.N.Mukherjee versus Union of India(Civil Appeal No.417 of 1984) decided on 28.8.1990(1991(1) S.C.T. Page 241);
- ii) The State of Punjab & Another versus Dr. Ram Kishan Chopra (1977(2) S.L.R. Page 809);
- iii) Chairman, Disciplinary Authority, Rani Lakshmi Bai K.G.Bank versus Jagdish Sharan Varshney & Ors. (Civil Appeal No.1921 of 2009) decided on 26.3.2009);
- iv) State of Punjab versus V.K.Khanna (2001(1) S.C.T. Page 933);
- v) Inspector Prem Chand versus Govt. of N.C.T. of Delhi & Ors. (2007(2) S.C.T. Page 650);
- vi) State of Punjab versus Ram Singh, Ex. Constable (1992(3) S.C.T. Page 448);
- vii) Union of India & Ors. vs. Shri J.Ahmed (1979(1) S.L.R. Page 840); and
- viii) Dalabhai Bhimabhai Patel vs. Dy. Commissioner of Police, Ahmedabad (1992(2) S.C.T. Page 224).

3. We have given our serious thought to the submissions of the learned counsel, but are not persuaded to agree with him that a writ be issued to abort the proceedings of enquiry at this stage. A bare perusal of the memorandum of charge-sheet served upon the applicant for holding enquiry shows that he was called upon to submit statement of defence within 20 days. Along with the memorandum of charge-sheet, he was also provided with a statement of imputation of mis-conduct or mis-behaviour in support of each articles of charges, list of documents and list of witnesses on the basis of which article of charges are proposed to be proved.

4. The applicant had earlier approached the Tribunal by filing O.A.No.060/01001/2017 wherein he sought quashing of the same very charge-sheet which has been impugned in this petition. In limine, this Court after recording the main contention of the learned counsel for the applicant that he has not been provided the copies of documents and statement relied upon by the department while issuing charge-sheet, this Court directed the respondents to provide him remaining documents and statements mentioned in Annexures-III & IV attached with memorandum of charge-sheet to enable the applicant to file detailed reply to the charge-sheet before further proceeding in the departmental enquiry. The order dated 29.8.2017 reads as under:-

"The main contention of learned counsel, at this stage, is that, although the applicant has moved an application for supplying copies of documents & statements, relied upon by the department, mentioned in Annexures-III & IV attached with the memo of charge-sheet, but the same were not supplied to him, which according to him are very much essential to file the reply by Charged Officer (CO).

Having heard the learned counsel for the applicant, having gone through the record with his valuable assistance, and without expressing any opinion on merits, lest it may prejudice the case of either side, the main instant Original Application (OA) is disposed of with the direction to the Competent Authority to provide the copies of remaining documents & statements mentioned in Annexures-III & IV attached with memorandum of charge-sheet, to enable the applicant to file the detailed reply to the charge-sheet, before further proceedings in the instant Departmental inquiry.”

The above extracted order makes it crystal clear that the plea of the applicant in that petition for quashing the charge-sheet on the available grounds was not found favour or in other words, it was not pressed upon by the applicant and by recording his main contention for not supplying the copies of documents as relied upon, the Court disposes of the petition. This led to one conclusion that either the applicant has waived or withdrew his challenge to the charge-sheet or this Court did not agree to his submissions to quash charge-sheet as the applicant agreed to attend enquiry proceedings by submitting reply after supply of documents. Therefore, the applicant cannot maintain second petition (i.e. present petition) for the same very relief i.e. for quashing of charge-sheet. Even the present petition is hit by the doctrine of res-judicata. Therefore, his plea for quashing the charge-sheet at this stage, cannot be looked into.

5. Even the second contention raised by the learned counsel for the applicant for quashing the letter dated 15.2.2018 being non-speaking also does not find favour for the simple reason that while issuing charge-sheet under Rule 8 of the Punjab Civil Service (Punishment & Appeal) Rules, 1971, they have shown their intention of mis-conduct against the applicant by serving article of charges

based upon documents, then the respondents are not obliged to pass separate detailed order after considering the reply to the charge-sheet. Otherwise, it will prejudice the right of the delinquent in enquiry as it will be without evidence if they record positive finding of misconduct in enquiry. Annexure A-1 leaves no manner of doubt that the respondents have considered his reply to the charge-sheet and found not satisfactory, accordingly they decided to proceed in the matter according to procedure as envisaged under 1971 Rules. It is settled proposition of law that the charge-sheet is not to be quashed prior to conclusion of the enquiry proceedings on the ground that the facts stated in the charge-sheet are erroneous for the reason that correctness or truth of the charges is the function of the disciplinary authority which the Court will not undertake or assume the power of the disciplinary authority by looking into the charge-sheet and reply submitted therein.

6. 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. versus Brahm Datt Sharma**, (A.I.R. 1987 S.C. Page 943); **Executive**

Engineer, Bihar State Housing Board versus **Ramesh Kumar Singh & Ors.** (1996(1) S.C.C. Page 327); **Ulagappa & Ors.** versus **Divisional Commissioner, Mysore & Ors.** (A.I.R. 2000 S.C. Page 3603); **Special Director & Another** versus **Mohd. Ghulam Ghoush & Another** (A.I.R. 2004(S.C. Page 1467); **Union of India & Another** versus **Kunisetty Satyanarayana** (A.I.R. 2007 S.C. Page 906); **State of Orissa & Another** versus **Sangram Keshari Misra & Another** (2010(13) S.C.C. Page 311); **Union of India and Another** Vs. **Ashok Kacker**, (1995 Supp(1) SCC 180); **State of Punjab & Others Vs. Ajit Singh** (1997(2) SCC 368);

7. Thus, the law on the issue can be summarised 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 premature stage to deal with the issues.

8. In the case of Kunisetty Satyanarayana (supra), the Hon'ble Apex Court has held that "the reason why 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 petition lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. 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.

9. In view of above discussion, we do not find any reason to interfere in the impugned orders at Annexures A-1 & A-2 at this stage, and accordingly the OA is dismissed being premature in limine.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P.GOPINATH)
MEMBER (A).**

Dated:- February 23 , 2018.

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