

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.620/2015

Dated this ~~Wednesday~~ the 18th day of September, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Mrs. Nanda Narayan Thombare,
aged 58 years,
Presently working as Senior
Supervisor in the Directorate
of Census Operations, Maharashtra
at Their office at "T" Ward
Municipal Office, Devi Dayal Road,
Mulund (West), Mumbai - 400 080.
And residing at Lansnaar Residency,
second Floor, Plot No.G 84,
Sector 10, Belapur,
Navi Mumbai - 400 614.

... **Applicant**

(By Advocate Shri Ramesh Ramamurthy)

VERSUS

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi - 110 011.
2. The Registrar General India and Census
Commissioner, Office of the Registrar
General India, Govt. of India,
2A Mansingh Road,
New Delhi - 110 011.
3. The Director of Census Operations
Directorate of Census Operations,
Govt. of India, 2nd Floor,
Exchange Bldg., Sir Shivsagar
Ramgulam Marg, Ballard Estate,
Mumbai - 400 001.

... **Respondents**

(By Advocate Shri R.R. Shetty)

O R D E R

Per: Ravinder Kaur, MEMBER (J)

This application has been filed on 28.10.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) That this Hon'ble Tribunal be pleased to quash and set aside the chargesheet memorandum dated 16th June, 2015;

(b) That this Hon'ble Tribunal be pleased to quash and set aside the letters dated 24th September, 2015 issued by respondent No.2 appointing the Enquiry Officer and Presenting Officer;

(c) Such other and further orders be passed as the facts and circumstances of the case may require;

(d) Costs of this Application be provided for."

2. The applicant joined service of Government of India in the Census Department on 18.12.1981 as Grade 'B' Operator. She earned various promotions in her career of 34 years. Last she was promoted as Senior Supervisor on 20.01.2014. During these periods, she was never issued any memo or warning and no shortcomings were pointed out during her said tenure.

2.1 She alongwith nine others was served with Office Memorandum dated 09.09.2014 (Annexure A-3) to the following effect:-

“Office Memo

It has been observed from the progress of CAC data entry work for the month of August 2014 that the performance of the following officials has been found to be lowest amongst all.

Sr No	Name	Monthly Average
1	R.A. VEDAK	4499.25
2	S.S. KENI	4506.87
3	F.M. FERNANDES	4517.38
4	K.S. BANDEKAR	4548.51
5	V.V. DESHPANDE	4645.29
6	K.S. Salunke	4666.41
7	C.A. Vardekar	4676.71
8	N.N. Thombre	4683.46
9	G. PRASAD	4684.29
10	A.A. JOSHI	4687.82

Taking serious view of the poor performance, all officials listed above are warned strictly to adhere to the norms given and any laxity in this will be viewed seriously and appropriate note of their poor performance will be taken while reporting their APAR in addition to any action initiated if any in future if felt necessary.

This has been issued with the approval of JDCo.”

The applicant submitted her explanation dated 15.09.2014 (Annexure A-4), however she did not receive any communication to the aforesaid Memorandum as to whether her explanation was admitted or not.

2.2 The applicant was served with Memorandum dated 09.10.2014 (Annexure A-7) containing allegation about her absence without prior intimation.

2.3 Thereafter, she was served with Office Memorandum dated 29.10.2014 (Annexure A-5) for her alleged absence on 01.10.2014 to which she submitted her explanation dated 03.11.2014 but again did not receive any communication in this regard from the respondents.

2.4 It is submitted that in the Office Memorandum dated 09.10.2014 there was no reference to the allegation as made in charge No.IV in the Office Memorandum dated 29.10.2014, which related to the purchase of immovable property. She submitted her explanation to the Office Memorandum dated 09.10.2014 (Annexure A-7) vide her letter dated 13.10.2014 (Annexure A-8) but she did not receive response from the office in this regard. It is submitted that the applicant had mentioned in her letter dated 03.11.2014 written in response to Office Memorandum dated 29.10.2014 explaining that she had intimated her superior about her taking leave on 01.10.2014 and she had also informed the name of the superior officer vide letter dated 10.11.2014 but without any response from the respondents.

2.5 The applicant received impugned chargesheet dated 16.06.2015 with the following articles of charge relating to her alleged absence and office conduct as well as allegedly acquiring immovable property without previous knowledge of the authorities.

"Statement of Articles of Charge framed against Smt N.N. Thombare, Sr. Supervisor

Article I

Smt. N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre, Mulund absented herself from duty from 10.09.2014 to 12.09.2014 without prior intimation which is indicative of negligence and lack of interest in work.

The said conduct is in violation of Rule 3(1)(ii) & (iii) of CCS(Conduct) Rules, 1964.

Article II

Smt N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre at Mulund refused to receive office memo which is indicative of disobedience to Superior's that amounts misconduct.

Smt. N.N. Thombare by doing so, has violated the provisions of Rule 3 (1)(i) & (iii) of CCS(Conduct) Rules, 1964.

Article III

Smt N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre at Mulund made false statements using abusive and indecent language against superior's communications which is indicative of unbecoming of a government servant.

The said conduct is in violation of Rule 3(1)(ii) & (iii) of CCS(Conduct) Rules, 1964.

Article IV

Smt N.N. Thombare, Sr. Supervisor acquired immovable property by way of purchase of flat without previous knowledge of the authority that amounts to misconduct.

Smt N.N. Thombare by doing so, has violated the provisions of Rule 18(2) & (4) of CCS(Conduct) Rules, 1964."

The statement of imputation of misconduct or misbehaviour in support of the Articles of charge framed against the applicant reads as under:-

Statement of imputation of misconduct or misbehaviour in support of the Articles of Charge framed against Smt N.N. Thombare, Sr. Supervisor.

Article I

Smt Thombare was engaged in CAC worked at Data Centre at Mulund during the month of August, 2014 where her performance was the lowest among all in Data Centre. She was issued a memo dated 9.9.2014 to improve her performance and she remained absent from 10.09.2014 and came to office only on 15.9.2014 and submitted an HPL application on medical grounds for the period from 10.09.2014 to 12.09.2014. On the same day i.e. 15.9.2015 Smt Thombare was served a memo dated 10.09.2014 asking for an explanation regarding absence without prior intimation which she refused to receive. Again Smt Thombare remained absent from duty on 1.10.2014 without prior intimation for which she was given a memo dated 29.10.2014 asking for her explanation but she remained silent. She submitted her explanation dated 3.11.2014 requesting to treat that day of absence as CL making a false statement that she had informed her Senior well in advance.

The said conduct is in violation of Rule 3(1)(ii) & (iii) and Government of India's Decision under Rule 23 of CCS(Conduct) Rules, 1964.

Article II

Smt N.N. Thombare while engaged in CAC work at Data Centre at Mulund refused to receive Office Memorandum dated 10.09.2014 served to her on 15.10.2014. On the same day, Sh Vijay Ahire, Dy. Director also called Smt. Thombare and tried to convince her to receive the memo but she refused to receive the same.

The said conduct is in violation of Rule 3(1)(ii) & (iii) and Government of India's Decision under Rule 3 of CCS(Conduct) Rules, 1964.

Article III

Smt N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre at Mulund remained absent from duty during 10.09.2014 to 12.09.2014 and 01.10.2014 without prior intimation. Due to her inconsistent behavior and irrelevant statement a memo was issued by the Head of Office dated 9.10.2014 calling her explanation to which she submitted a reply dated 13.10.2014 stating that her reply dated 15.09.2014 was for OM date 9.9.2014 issued to her for her performance being the lowest among all Data centre. But in fact in her reply dated 15.09.2014 she has alleged her Sr. Officer of stating her to be highly irregular being a government servant which is contradictory cause in memo dated 9.9.2014 no where such words have been used. Smt. Thombare vide her reply dated 13.10.2014 stated that she had informed about her absence from Director. In fact being a Sr. Supervisor she cannot seek permission from her colleague whose name she was unable to tell. Smt Thombare remained absent on 1.10.2014 without any intimation for which she was served a memo dated 29.10.2014 asking her explanation for absence to which she submitted her explanation dated 3.11.2014 lying that she had informed her Supervisor (ADCO) whereas no ADCO was posted there as her superior. She was again asked by memo dated 10.09.2014 to provide the name of the ADCO whom she had informed. She submitted her reply on 11.11.2014 quoting the name of Shri Amrutsagar (ADCO) whereas he has given his comments that she has not informed him anything about her unauthorized absence.

The said conduct is in violation of Rule 3(1)(ii) & (iii) of CCS(Conduct) Rules, 1964.

Article IV

Smt N.N. Thombare, Sr. Supervisor entered into transaction of immovable property by purchasing the same on 15.5.2013 without prior knowledge of the authority. Only on 22.5.2014, she informed the office that she is going to purchase a flat from Xreia project Hinjewadi, Pune and submitted Form-I for permission and submitted that the said flat had already been registered on 15.5.2013. After receipt of this application, she was given a memo dated 29.5.2014 asking her to submit copies of property/documents. After verifying the actual facts from the file, it was confirmed that she had purchased the property and got registered on 15.5.2013 i.e. one year back. Therefore a fresh memo was issued to her on 9.6.2014 to which she submitted her reply on 17.6.2014 and justified her stand stating that the property is only acquired but not yet purchased as long as it is not possessed by her. She submitted a copy of property registration documents of flat

purchase for Rs.12,70,200/- from M/s. Xreia Hijnewadi Projects registered in Mulshi Sub-Registrar's Office at Pune. All these documents along with memos issued to her were forwarded to ORGI vide letter dated 2.9.2014. In reply ORG asked DCO vide letter dated 24.11.2014 to call explanation from Smt Thombare for delay in intimation regarding purchase of immovable property. Smt Thombare vide her reply dated 5.1.2015 submitted that her intention was to inform office about this transaction only after confirmation of loan sanction. After examination of her reply, ORGI vide letter dated 11.3.2015 which was endorsed to her, she was asked to submit details of payments. Initially she did not reply but later when a memo dated 21.4.2015 was served to her she submitted her details of payments vide letter dated 27.4.2015 stating that she did not reply to the memo dated 11.3.2015 as it was addressed to the Controlling Officer and a copy of the same was endorsed to her for information.

The said conduct is in violation of Rule 18(2) & (4) of CCS(Conduct) Rules, 1964."

The applicant has alleged that in the imputation of misconduct, there was allegations made against the applicant which were not contained in the articles of charge. Further, articles of charge Nos.I, II & III were overlapping and in fact related to the same incident but were bifurcated in three charges. To the aforesaid chargesheet, she submitted her reply dated 16.06.2015 (Annexure A-1) and pointed out that the charges were overlapping and that the imputations of misconduct were different from the articles of charge. Vide her said reply, she requested for dropping of chargesheet memorandum.

2.6. Regarding the article of charge No.IV relating to purchase of immovable property without prior intimation, it is submitted that she had intimated to the office that she is purchasing a immovable property in Pune and for the said purpose, she required to apply for loan from a banking institution and applied for issuance of her Service Certificate. The Service Certificate dated 22.11.2012 (Annexure A-12) was issued. At that time she made a written request with all the necessary information about the purchase of the immovable property and only thereafter she was issued Service Certificate. It is stated that this act on the part of the applicant amounts to an intimation as required under Rule 18(2) of the CCS(Conduct) Rules. Further, vide application dated 22.05.2014, she second time informed the respondents about her purchase of immovable property and she was called upon by the office of respondent No.3 vide Memorandum dated 29.05.2014 to submit the xerox copy of the documents relating to the property purchased by her. It is stated that ignoring the issuance of Service Certificate, the respondents issued Office Memo dated

09.06.2014 wherein it was mentioned that she had already purchased a property and therefore she should give her explanation to the same. Thereafter again she was served with letter dated 24.11.2014 (Annexure A-16) issued by office of respondent No.2 seeking explanation of the applicant about submitted the delayed intimation with regard to the transaction of immovable property to which she gave her reply dated 05.01.2015 (Annexure A-17). Thereafter, she was served with letter dated 11.03.2015 (Annexure A-18) issued by respondent No.1 and Memorandum dated 21.04.2015 (Annexure A-19) issued by respondent No.3 with direction to furnish further details regarding purchase of above referred property. To which she gave her reply dated 27.4.2015 (Annexure A-20) alongwith the documents.

2.7 The applicant has alleged that the respondents are deliberately trying to spoil her service record and to create an impression as if her performance is not upto the mark and also that she has acted in an improper manner including in the matter of purchase of immovable property. Further that her explanation given to

the chargesheet has not been replied and instead the Inquiry Officer and presenting officer were appointed to enquire into the charges framed against her vide impugned chargesheet dated 16.06.2015.

2.8 Applicant has sought quashing of the impugned chargesheet as well as the letters appointing the Inquiry Officer and the presenting Officer on the grounds that (i) the chargesheet has been issued only with a view to harass and victimise her, (ii) The same is containing overlapping charges, (iii) The articles of charge and imputation of misconduct are different and distinct, (iv) Regarding her absence from duty during the period 10.09.2014 to 12.09.2014, it is submitted that she has already made an application for half pay leave on medical ground which has not been refused by the respondents. (v) The allegations as contained in article of charge No. IV are contrary to the record.

3. The respondents have filed detailed affidavit in reply. It is stated that the applicant has wrongly stated in the OA that office has always appreciated her performance.

They have furnished the following details of instances from her service record in respect of her performance :

"(i) Her performance during the period from 2001-02 & 2002-03 was not up to the mark and hence her 2nd ACP was deferred by 2 years.

(ii) During Census 2001, she refused the work of Post Enumeration Survey (PES) during the period from 22.06.2000 to 11.07.2000 and hence action has been taken under Rule FR 17(1) treating this period as dies-non."

3.1 Regarding the Office Memorandum dated 09.09.2014, it is stated that the applicant submitted irrelevant reply dated 15.09.2014 and this fact was brought to her notice vide memorandum dated 09.10.2014. The applicant submitted reply dated 13.10.2014 which is also not on the points asked for.

3.2 Regarding the absence of the applicant from duty on 01.10.2014, it is submitted that the same was without prior intimation and she remained silent until a memo was issued on 29.10.2014 seeking her explanation of absence. In her reply dated 03.11.2014, she stated that she had informed her supervisor ADCO but infact there was no ADCO posted in that Data Centre. The respondents have drawn the attention of the Tribunal to the reply dated 11.11.2014 of the applicant to the Office Memorandum dated

10.11.2014 wherein she has provided name of ADCO to whom she purportedly informed about her leave. She furnished the name of ADCO as Shree S. Amrutsagar. However, AD(DC) made his endorsement at the foot of this reply that he had no discussion with the applicant about her leave on 01.10.2014.

3.3 It is submitted that the chargesheet has been issued by the competent authority and before issuance of the chargesheet, the applicant was given adequate opportunity to be heard. It is only after her reply dated 16.07.2015 was received and on being rejected by the competent authority, the chargesheet was issued to her.

3.4 It is submitted that if the applicant had any doubt about the jurisdiction of the authority she should have pointed out this at the same time. But merely mentioning that the list of orders of charges and their merger or split and overlapping of contents etc. are needless to defend her misconduct. Irrespective of their number, she should have clearly stated whether she accepts or deny the charges. Further she has not at all commented on any single

document of the list of documents of the Annexure - III of the charge sheet nor has raised any objection over the names of the witnesses as listed in the Annexure - IV of the charge sheet.

3.5 Regarding the purchase of immovable property by the applicant from Xrbia Hinjewadi Developers Private Limited project, Pune on 15.05.2013, the respondents have relied upon the sale agreement (Exhibit R-9) and stated that the applicant submitted Form-I under Rule 18(2) of CCS(Conduct) Rules, 1964 vide her letter dated 22.05.2014 (Exhibit R-10) in which she categorically mentioned that she was going to purchase the property in Pune whereas in Form I she mentioned that the property is registered on 15.05.2013. Consequently she was issued Memos dated 29.05.2014 and 09.06.2014 (Exhibit R-11 and R-12 respectively) for purchasing immovable property without prior permission. It is stated that the applicant had purchased the immovable property on 15.05.2013 by entering into a sale deed and after one year on 22.05.2014 sought permission from the office.

3.6 Regarding the issuance of Service Certificate dated 22.11.2012 by the respondents, it is submitted that in the certificate it is nowhere mentioned that the applicant has been granted permission for purchase of property and that in her application dated 09.11.2012 whereby she had applied for Service Certificate, it is mentioned that she needs Service Certificate for applying home loan and it does not find mention that it was for purchase of home/flat etc. The respondents have further questioned that if she had applied for permission vide letter dated 22.11.2012 seeking Service Certificate then why did she apply for permission again on 22.05.2014. It is stated that from the facts it is clear that the applicant was aware of the rule and deliberately purchased the property without seeking permission from office.

3.7 The respondents further state that they have followed all the procedure by giving her sufficient opportunity of hearing and that the chargesheet has been issued as per rules and regulations. All the supportive documents and evidence alongwith list of witnesses are annexed to the chargesheet. Charges against her are

grave and factually true. The applicant has nowhere stated that any document annexed in support of the chargesheet is false or frivolous. It is denied that the articles of charge are overlapping or the contents of the charge are different from the imputation of misconduct. The respondents have prayed that the OA be dismissed.

4. We have heard Shri Ramesh Ramamurthy, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents and have carefully gone through the material available on record. We have perused the chargesheet also.

5. Learned counsel for the applicant has submitted that the chargesheet is defective as the articles of charge No.I, II and III are overlapping and the imputations are contrary to the articles of charge. It is further submitted that the various Office Memorandums were issued to the applicant on account of her absence from the office w.e.f. 10.09.2014 to 12.09.2014 and thereafter on 01.10.2014, however the applicant in her reply to these Memorandums has clarified that she was on medical leave w.e.f. 10.09.2014

to 12.09.2014 and one day CL on 01.10.2014 and that she had informed the ADCO about her proceeding on leave on 01.10.2014. Further that the medical leave applied by the applicant for the period 10.09.2014 to 12.09.2014 has not been refused, as such, there was no unjustified absence of the applicant from the office which could invite the disciplinary inquiry against her. It is further argued that so far Article of charge No.IV is concerned, she had intimated to the office about her intention to purchase the property when she had applied for issuance of Service Certificate and the office had issued knowingly the said certificate.(Annexure A-12). Later on, at the instance of the office she had again furnished the necessary information as and when required. It is argued that the reply to the chargesheet filed by the applicant speaks volume about the discrepancy in the Articles of Charge but despite that the chargesheet has not been dropped by the Competent Authority.

6. On the other hand, learned counsel for the respondents has submitted that all these contentions raised by the applicant are of no consequence; it is argued, this Tribunal while

exercising power of judicial review cannot quash and set aside the chargesheet as merely issuance of charge sheet does not give rise to any cause of action in favour of the applicant and that no right of the applicant was infringed by issuance of the chargesheet. The inquiry is yet to be conducted against her and during the course of inquiry, the applicant will be given sufficient opportunity to rebut the allegations against her and in case after the conclusion of the inquiry the Disciplinary Authority holds her guilty and imposes punishment, only thereafter the applicant can approach this Tribunal for redressal of her grievances. It is further submitted that this Tribunal can interfere at the stage of chargesheet only if from the charges framed read alongwith the imputations, no misconduct or irregularity alleged can be said to have been made out.

7. Learned counsel for the respondents has relied upon the following judgments of the Hon'ble Apex Court on the subject under consideration:-

(i) Union of India and Others vs. Upendra Singh, 1994 SCC (L&S) 768

(ii) State of Punjab and Others Vs. Ajit Singh, 1998 SCC (L&S) 154

(iii) District Forest Officer Vs. R. Rajamanickam and Another, 2000 SCC (L&S) 1100

(iv) Union of India and another Vs. Kunisetty Satyanarayana, Civil Appeal No.5145/2006 decided on 22.11.2006

(v) Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha, 2012 (11) SCC 565.

In the case of Upendra Singh (supra), the Hon'ble Apex Court made the following observations in para 6:-

6. 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 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 charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the 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. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons, 1992 Supp (2) SCC 312. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"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 authorized 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."

It further observed in para 7 as under:-

"7. 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? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

Para 3 of the judgment of Hon'ble Apex Court in the case of Ajit Singh (supra) is relevant and reads as follows:-

"3. We do not find any ground to interfere with the judgment of the High Court insofar as the quashing of the order of suspension is concerned. We are, however, of the view that the High Court was in error in setting aside the charge-sheet that was served on the respondent in the disciplinary proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge-sheet was based and even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the explanation offered by the respondent, has proceeded on the basis that there was no merit in the charges levelled against the respondent. We are unable to uphold this approach of the High Court. The allegations are based on documents which would have been produced as evidence to prove the charges in the disciplinary proceedings. Till such evidence was produced it could not be said that the charges contained in the charge-sheet were without any basis whatsoever."

In the case of District Forest Officer (supra), the Hon'ble Apex Court relying upon its own judgment in the case of Upendra Singh (supra) made following observations in para 2:-

"2. In view of the aforesaid decision we find that the Tribunal was not justified under law to interfere with the correctness of the charges levelled against the delinquent officer. We, therefore, set aside the order and judgment of the Tribunal under appeal. However, since no final order has been passed it will be open to the respondents to challenge the said order, if any adverse order is passed against them. The appeals are allowed. Since none appeared for the respondents there shall be no order as to costs."

The Hon'ble Apex Court in the case of Kunisetty Satyanarayana (supra) held that "A mere chargesheet 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". It further observed that "No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal."

In the case of Secretary, Ministry of Defence and Others (supra), the Hon'ble Apex

Court dealt with the similar issue and made relevant observations in paras 8, 10, 11 & 12:-

“8. The law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the chargesheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the chargesheet 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 chargesheet 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 circumstance. (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, Cooperative Societies, Faizabad v. Sachindra Nath Pandey & Ors., (1995) 3 SCC 134; 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).

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10. Ordinarily a writ application does not lie against a chargesheet 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, chargesheet 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 chargesheet 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; Ulagappa & Ors. v. Div. Commr.,

Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

11. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, this Court held that normally a chargesheet 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).

12. Thus, the law on the issue can be summarised to the effect that chargesheet 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 chargesheet 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.

8. In the light of the judgments of the Hon'ble Apex Court referred above, we have carefully gone through the facts and the relevant material available on record. Admittedly, in the present case, the applicant was issued Office Memorandums dated 21.04.2015, 29.05.2014, 09.06.2014, 09.09.2014, 09.10.2014, 29.10.2014 and 10.11.2014. The applicant furnished her reply to all these Memorandums. However, not being satisfied with the replies furnished by the applicant, the Disciplinary

Authority issued chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 to the applicant to which she submitted her reply dated 16.07.2015 (Annexure A-11). She has mainly laid stress that articles of charge I, II and III are overlapping and interconnected though shown as three separate charges. She has also alleged that the Disciplinary Authority was not apprised of the complete facts which led to the issuance of chargesheet. Further that the imputations of misconduct are not in consonance with the articles of charge and are different from each other. However it is observed that it is not the case of the applicant that the chargesheet has been issued by incompetent authority nor it is the case of the delayed chargesheet or issued with malafide. The perusal of the chargesheet clearly shows that the allegations against the applicant of absenting from duty and purchasing immovable property without obtaining prior permission from the office are serious in nature and *prima facie* amounts to grave misconduct. As held by the Hon'ble Apex Court in the case of Upendra Singh (supra) and other judgments referred above, at this stage, the Tribunal

cannot examine the correctness or truth of the charges on the basis of her reply submitted to the Office Memos or to the chargesheet, which exercise needs to be done by the Disciplinary Authority or the Inquiry Officer nominated/appointed by the Disciplinary Authority. The Tribunal is not expected to usurp the jurisdiction of Disciplinary Authority and the Inquiry Officer to find out if the charges are made out or not?. The Hon'ble Apex Court in the case of Upendra Singh(supra) in para 6 of the judgment referred above has categorically held that in the case of charges framed in the disciplinary inquiry, the Tribunal or the Court can interfere only if 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. Further that the Tribunal has no jurisdiction to go into the correctness or the truth of the charges. The Tribunal can never take over the function of the Disciplinary Authority. It is for the Disciplinary Authority only to go into the truth or otherwise of the charges. The Hon'ble Apex

Court has gone to the extent of holding that even after the conclusion of the disciplinary proceedings, if the matter comes before the Tribunal, it has no jurisdiction to look into the truth of the charges or correctness of the findings recorded by the Disciplinary Authority or the Appellate Authority as the case may be as the power of the judicial review vested with the Tribunal is not directed against the decision but is confined to the decision making process.

9. In the present case, we have carefully gone through the articles of charge alongwith the imputation. However, the perusal of the same do not lead us to form a view that no misconduct or any irregularity, as alleged, has been committed by the applicant. We also do not find force in the contentions of the applicant that the charges framed are contrary to any law. In view of the settled proposition of law, this Tribunal has no jurisdiction to find out the correctness or the truth of the charges levelled against the applicant. No doubt, this Tribunal has power of judicial review. However, it can only be exercised to find out that the concerned authorities adhere to correct decision making

process. Judicial review cannot be extended to the examination of correctness or reasonableness of a decision as a matter of fact.

10. In these circumstances, we do not find merit in the OA. Hence, the same is hereby dismissed, No order as to costs.

(Ravinder Kaur)
Member (J)

(R. ~~Vijay~~kumar)
Member (A)

ma.

JD
20/9/19

