

***IN THE HIGH COURT OF DELHI AT NEW, DELHI**

+ W.P.(C) No. 539/2009

% Reserved on: 22nd May, 2009
Pronounced on: 3rd July, 2009.

Union of India & Ors Petitioners

Through: Mr. R.N. Singh, Advocate

VERSUS

Shri Azam Siddiqui & Ors. Respondents

Through: Mr. Jai Kishore Singh,
Advocate

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE V.K.JAIN

**1. Whether Reporters of Local newspapers may
be allowed to see the Judgment? YES**

2. To be referred to the Reporter or not? YES

**3. Whether the Judgment should be reported in
the Digest? YES**

V.K.Jain, J.

1. The respondent No.1, a Member of Indian Engineering Service, was issued a Memorandum dated 10.10.2006, proposing imputation of minor penalty against him. The statement of imputation annexed to the Memorandum contained a large number of allegations

against him, for the misconduct alleged to have been committed by him while working as DE, Pratapgarh. It was further alleged that he was unauthorisedly absent from duty from 24.7.2003 to 27.7.03 without information and sanction of leave and was making false allegations of committing irregularities against his colleagues and superiors. Before issuing the Memorandum, the petitioner had sought advice of Central Vigilance Commission, which, after perusing the investigation report, had advised initiation of minor penalty proceedings against the respondent No.1.

2. The respondent No.1 filed OA No. 1003 of 2007 before the Central Administrative Tribunal, seeking quashing of the Memorandum and consequential disciplinary proceedings. Vide order dated 25.7.2008, the Tribunal set aside the Memorandum dated 10.10.2006 and also directed that any adverse remarks in his ACR on account of minor penalty should also be expunged. He was also held entitled to all consequential benefits. The decision of the Tribunal was based on the ground that absence of the respondent No.1 from duty occurred in the

year 2003 and was a trivial one and their clubbing with the allegations of being a whistle blower clearly showed bias towards him and a pre-determined attitude of the authorities. The Tribunal felt that there was a danger of bias as the complaint made by him had not been proved to be vexatious and the Officers, against whom complaint had been made, had been transferred. The Tribunal found that initiation of enquiry was held by oblique motive and extraneous consideration, in order to teach a lesson to the respondent No.1. Being aggrieved by the order of the Tribunal, Union of India has come to this Court by way of this Writ Petition.

3. According to the petitioner, a complaint was received by them through Central Vigilance Commission on 10.6.2005 and the same was got investigated. In view of the findings of irregularities on the part of the respondent No.1, it was decided by the competent authority, on the advice of Central Vigilance Commission, to initiate disciplinary action against the respondent No.1 under Rule 16 of the CCS (CCA) Rules and a Memorandum was accordingly issued to him, asking him to submit his reply.

The Respondent No.1, instead of giving reply, sought inspection of certain documents. When his request for documents was under consideration, he approached the Tribunal by filing OA No.1003/2007, which resulted in passing of the impugned order.

4. One reason given by the Tribunal for quashing the Disciplinary Proceedings against the respondent No.1 is that his absence from leave, having occurred in the year 2003, was very much known to the petitioner and its clubbing with other allegations shows biased and a pre-determined attitude. A perusal of the memorandum issued to the respondent No.1 would show that the main allegations against him was that he, while posted and working as Divisional Engineer (DE) Pratap Garg, made a complaint to M.D., BSNL against GMT(General Manager Telecom) and GDM (P&D) and the allegations made by him were found to be baseless and not proved. The other allegations against him were that (i) he had disconnected Allahabad –Mirzapur PCM from OCB on 20.5.2003 without any order; (ii) he failed to implement IUC from 1.5.03 to 23.5.03 for M/s Essar in spite of order dated 30.4.03 and

(iii) he unauthorisedly suppressed CLI for WLL service connection. Another allegation against him was unauthorised absence from duty from 24.7.03 to 27.7.03 without any information and without sanction of leave. It is true that unauthorised absence of the respondent No.1 from duty would have come to the notice of his superiors in July, 2003 itself and no disciplinary action appears to have been taken against him in this regard for more than three years. But, the delay in taking disciplinary action for the unauthorized absence cannot be said to be so inordinate as to totally vitiate the disciplinary proceedings. May be the requirement would not have initiated disciplinary proceedings against the respondent No.1 for unauthorised absence for a few days, had they not found that he had made false allegations against his superiors and had committed other acts attributed to him in the memorandum. In any case, even if the charge of unauthorised absence from duty is excluded from the memorandum, the respondent No.1 was still required to reply to and meet the other allegations including that of making serious but baseless allegations against his superior officers. Therefore, we cannot justify quashing of

the disciplinary proceedings merely because the Writ Petitioner clubbed three years old unauthorized absence from duty alongwith other allegations, in the statement of allegations against the respondent No.1.

5. The statement of imputation of mis-conduct annexed to the memorandum issued to the respondent No.1 shows that the allegations made by him against the GMT and DGM (P&D) were found to be baseless and not proved. Though the respondent No.1 claimed to be a Whistle Blower, it was for the competent authorities in BSNL to enquire into the allegations made by him and find out whether they are true or baseless. It is not that no investigation was carried out into the allegations made by the respondent No.1. The statement of imputation of mis-conduct would show that investigation was carried out and it was established that:

(a) All payments were received regarding providing 14 PCM to private basic operator from OCB and no violation was observed in their installation.

(b) The TAX POI with M/s. Reliance in Allahabad was provided from OCB local cum TAX in place of AXE exchange due to technical reason.

(c) All departmental formalities were completed by planning section before commissioning of local and TAX POI of M/s. Reliance.

It further shows that the allegations received from other sources in the case, were also investigation by other teams and DoT (VTM) also. According to the respondent No.1, the allegations made by him were found to be partially correct as recommendation was made to transfer Shri Mahesh Kumar, Shyam Babu and Shri Radhey Shyam to a circle more than 500 KMs away which shows that there was some truth in the complaint made by him. We are unable to accept that the transfer of some officers of BSNL by itself proves that the complaint made by the respondent No.1 against them was found to be correct. The transfer can have various administrative reasons and in the absence of any material being placed before the court in this regard, we cannot say that it was on account of some truth having been found in the complaint made by the

respondent No.1. We cannot lose sight of the fact that the statement of imputation of misconduct issued to the respondent No.1 specifically states that the allegations made by him were found to be baseless and were not proved. In the face of a specific statement in the statement of imputation coupled with absence of any material, as would compel us to take a contrary view, we cannot say that the complaints made by the respondent No.1, against his superiors, were found to be at least partially correct. In any case, it is still open to the respondent No.1 to submit his reply to the Disciplinary Authority and convince it that the complaint made by him against his superiors was not meritless and was made bonafide in the interest of the organization he was serving. We, however, find it difficult to accept that the disciplinary proceedings against the respondent No.1 could have been quashed merely because some officers of BSNL, against whom complaint were made by the petitioner, were transferred from the place where they were posted.

6. Even if it is assumed, for the sake of arguments, that the complaints made by respondent No.1 were not

frivolous and carried some substance in them, the Memorandum issued to him can still not be quashed because the allegations comprised in it include, besides unauthorised absence from duty, the following and there is no reason why the disciplinary authority should not take a view on these allegations, after considering the reply of respondent No.1.:

“(i) In spite, after observing the replies of the said Shri Azam Siddiqui and office records, it has been found that Shri Azam Siddiqui, while working as DE Pratapgarh, disconnected Allahabad-Mirzapur PCM from OCB on 20.05.2003 without any order. An explanation was called from Shri Azam Siddiqui for which no reply was submitted by him.

(ii) He failed to implement IUC from 01.05.2003 to 23.05.2003 for M/s Essar, in spite of order at letter No. XXP/2000 dated 30.04.2003.”

7. The case of the respondent No.1 is that he was a Whistle-Blower having exposed the misdeeds of his superior officers. The Tribunal had noted that the office order dated 17.5.04 issued by the Vigilance Commissioner obligated it to ensure that no punitive action was taken by concerned administrative authority merely because the complainant was a Whistle Blower. We find that the

Tribunal itself has further noted that if the complaint is found to be personally motivated with oblique purpose, the complainant should not be left scot free and in such a circumstance the prerogative of the Disciplinary Authority to hold an inquiry against him cannot be unfair. We cannot remain oblivious of the fact that disciplinary action against the respondent No.1 was initiated on the specific advice of the Central Vigilance Commission. The consultation with the Commission is an important safeguard against motivated and malafide disciplinary action. We cannot ignore the advice given by Central Vigilance Commission, at least at this stage when the respondent No.1 is yet to reply to the memorandum and he still has ample opportunity to convince the Disciplinary Authority that the complaint made by him was not baseless and that the disciplinary action initiated against him was actuated by malafide and ill-motive.

8. A perusal of the memorandum would show that it has been issued by order and in the name of the President. The power of President, in the matter of Disciplinary Action is exercised at a very high level and Central Vigilance

Commission will have to be consulted again before taking any final decision on the memorandum. It cannot be presumed that the high functionary, exercising the power of the President would not act fairly and impartially. This is more so, when there is no allegation against the functionary which would be exercising the power of the President in the matter. The second advice of CVC, before taking a final decision would be an additional safeguard for the respondent No.1. We, therefore, see no justification for the respondent No.1 not replying to the memorandum and not facing the disciplinary proceedings for imposing minor penalty.

9. In **Union of India v. Upendra Singh; JT 1994 (I) S.C. 658**; the Hon'ble Supreme Court, vide its order dated September 10, 1992, drew attention of the Tribunal to the following observations made by it in the case of **Union of India and Others v. A.N. Saxena, JT 1992 (2) SC 532**:

"It is surprising that without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the Tribunal appears to have done, it would be

extremely difficult to bring any wrongdoer to book."

When the matter went back to the Tribunal, it went into the correctness of the charges on the basis of the material produced by the respondent No.1 and quashed the charges holding that the charges do not indicate any corrupt motive or any culpability on the part of the respondent No.1. The order of the tribunal did not find favour to the Hon'ble Supreme Court which felt that the tribunal had undertaken the inquiry which ought to be held by the Disciplinary Authority.

The Hon'ble Supreme Court further observed as under:

"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.

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

10. In **Union of India & Another v. Ashok Kacker, 1995 Supp (1) Supreme Court Cases 180**, the respondent No.1 without submitting his reply to the charge-sheet rushed to the CAT. The tribunal entertained his application and quashed the charge-sheet. The Hon'ble Supreme Court while setting aside the order of the Tribunal, observed as under:

"Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him.

The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the Disciplinary Authority thereon."

11. In **State of Punjab and Others V. Ajit Singh, (1997) 11 Supreme Court Cases 368**, disciplinary proceedings were initiated against the respondent No.1. He filed a Writ Petition in the High Court challenging his suspension as well as charge-sheet. The Writ Petition was allowed by the Single Judge and the LPA filed by the State was also dismissed. In the appeal, filed by State of Punjab, the Hon'ble Supreme Court set aside the order of quashing the charge-sheet and held as under:

"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."

12. In **Union of India & Anr. V. Kunisetty Satyanarayana, AIR 2007 Supreme Court 906**, a charge memo was issued to the respondent No.1 who instead of replying to the same, filed an A.O. before the

CAT. He was directed by the Tribunal to give reply to the charge memo. In place of filing the reply, he filed Writ Petition in the High Court which was allowed. Setting aside the order of the High Court, the Hon'ble Supreme Court observed as under:

"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 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.

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. However, ordinarily the High Court should not interfere in such a matter."

13. In view of the proposition of law, consistently laid down by the Apex Court, and keeping in view the fact that (i) The Memorandum of charge has been issued to the respondent No.1 in the name of President of India; (ii) the power of the President is to be exercised by a high functionary; (iii) the respondent No.1 still has an opportunity to convince the Disciplinary Authority that the complaint made by him was bona fide, made in the interest of the institution and was at least partially true; (iv) CVC will have to be consulted before taking any final decision on the memorandum and (v) in the event of a minor penalty being imposed upon the respondent No.1, he would be at liberty to challenge the same before the Appellate Authority, if the rules applicable to him provide for an appeal and / or before the CAT on appropriate grounds, we cannot uphold the order of the Tribunal quashing the memorandum issued to the respondent No.1.

14. We are rather surprised to know that the tribunal has chosen to direct that the respondent No.1 shall be entitled to all the consequential benefits and any adverse remark made in the CR on account of minor penalty should also be

expunged, despite the fact that the respondent No.1 was yet to reply to the memorandum and the Disciplinary Authority was yet to apply its mind as to whether to impose any penalty or not upon the respondent No.1. We fail to appreciate how there could have been any adverse remarks in the ACR of the respondent No.1 on account of minor penalty, when no penalty, as such, has been imposed upon the respondent No.1. Similarly, the order granting all consequential benefits to the respondent No.1 is also meaningless as this is not the case of the respondent No.1 that he has been denied any benefit on account of initiation of minor penalty proceedings against him.

15. For the reasons given above, the Writ Petition is allowed and the order dated 25.7.08 passed by the Central Administrative Tribunal is hereby set aside.

(V.K. JAIN)

JUDGE

(A.K. SIKRI)

JUDGE

July 3 , 2009.
'raj/acm'