

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

+ **W.P.(C) No.4222/2013**

% **8th July, 2013**

DR. MUHAMMAD IQBAL

..... Petitioner

Through: Mr. Rana Ranjit Singh, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. M.P. Singh, Advocate with Mr.
R.K. Jha, Advocate for respondent
No.1.
Mr. Saket Sikri, Advocate with Mr.
Sudeep Dey, Advocate for respondent
No.2.
Ms. Mamta Tiwari, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

+ W.P.(C) No.4222/2013 and C.M. No.9841/2013 (stay)

1. This writ petition is filed by one Dr. Muhammad Iqbal praying for quashing of the order dated 16.5.2013 by which Enquiry Committee has been constituted for conducting of a full fledged enquiry of the charges against the petitioner. Prayer is also made for quashing of the consequent

notice dated 13.6.2013 issued by the Enquiry Committee for appearing on 8.7.2013. Related reliefs are also prayed.

2. Before I set out the arguments urged on behalf of the petitioner, it would be necessary to refer to the relevant case laws as to what is the scope of hearing in a Court before which enquiry proceedings are challenged right at the outset.

3. The Supreme Court in the case of *State of Uttar Pradesh Vs. Brahm Datt Sharma and Anr. (1987) 2 SCC 179* has held the following in para 9 of its judgment:-

“9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice.”
(underlining added)

A reference to the aforesaid para shows that truth or falsity of the allegations cannot be determined by a Court before whom enquiry proceedings are challenged at the outset and an entitlement to challenge the

enquiry proceedings arises only when there is found lack of jurisdiction.

4. The Supreme Court in its recent judgment in the case of ***Secretary, Ministry of Defence and Ors. Vs. Prabhash Chandra Mirdha*** **2012 (11) SCC 565** has similarly so held by referring to various earlier judgments including the judgment in the case of ***Brahm Datt Sharma*** (*supra*). Paras 10 to 12 of the said judgment read as under:-

“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, Bihar State Housing Board v. Ramesh Kumar Singh, Ulagappa and Ors. v. Div. Commr., Mysore and Ors., Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. and Union of India and Anr. v. Kunisetty Satyanarayana**).

11. In **State of Orissa and Anr. v. Sangram Keshari Misra** (SCC pp. 315-16, para 10) 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 v. Upendra Singh**).

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.”
(underlining added)

5. It is therefore clear that a Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of res judicata or double jeopardy or that on the face of the show cause notice even if facts are accepted as correct no charges are made out or there is no cause of action or no violation of any law or rules etc etc.

6. On behalf of the petitioner, two grounds are urged before this Court to seek the reliefs as prayed in the writ petition:

(i) The Vice Chancellor of the respondent No.2 was a part of the Executive Council which has decided holding of the enquiry proceedings and since petitioner has made a complaint against the said Vice Chancellor, the Vice Chancellor being accordingly biased, therefore, the said Vice Chancellor Dr. G.N. Qazi could not have been the member of the Executive Council, which is the Disciplinary Committee which has directed holding of

the enquiry. It is urged that Dr. G.N. Qazi headed the two Executive Committee meetings (66th & 67th) which decided for the holding of the disciplinary proceedings against the petitioner and which action is argued as being impermissible in law.

(ii) The two members of the Executive Council, namely Professor Abdul Nafey and Professor Rasheeduzzafar, were members of the 66th meeting and 67th meeting of the Executive Council, and they have also been made part of the Enquiry Committee and which action as per the petitioner violates the principles of natural justice because the aforesaid two persons have expressed an opinion in the Executive Council meeting to hold an enquiry against the petitioner.

7. So far as the first ground is concerned, I fail to understand as to how if out of ten members of the Executive Council there is a complaint only against one member who is Chairman of the Council, can the recommendations of the said Disciplinary Committee/Executive Council for holding of a full fledged enquiry in any manner be faulted with. It is in the full fledged enquiry that the truth or falsity of the allegations will be decided and holding of an enquiry is in fact to comply with the principles of natural justice so as to decide the truth or falsity of the allegations.

Therefore I do not find any illegality in the Vice Chancellor of the respondent No.2 being part of the Disciplinary Committee which has directed holding of a full fledged enquiry against the petitioner merely on the ground that the petitioner has made a complaint against the said Vice Chancellor and who therefore as per the petitioner cannot be a member of the Executive Council. I may also at this stage state that in fact if there are preliminary enquiry proceedings or a preliminary fact finding enquiry, in such preliminary fact finding enquiry principles of natural justice are not to be followed because it is in the main enquiry proceedings that principles of natural justice have to be followed by calling the person against whom charges are levelled. The object of a preliminary fact finding enquiry is only to decide whether or not to initiate a full fledged enquiry. The preliminary enquiry is for finding out if prima facie facts exist so as to decide whether or not to hold actual/detailed enquiry proceedings.

8. So far as the second argument which is urged on behalf of the petitioner that two persons namely Prof. Abdul Nafey and Prof. Rasheeduzzaffar cannot be members of the actual Enquiry Committee because they were part of the Disciplinary Committee/Executive Council which has decided to hold enquiry proceedings, the argument is quite clearly

a convoluted one. The argument is also clearly hollow. This is because either the Disciplinary Committee as a whole with all its members could have conducted the enquiry proceedings or it could not have nominated any person or any members of the Disciplinary Committee to hold detailed enquiry proceedings. As already stated above, nothing is decided one way or the other when enquiry proceedings are commenced, and no member who has decided to hold an Enquiry Committee can be said to have therefore opined in one way or the other with respect to the guilt or otherwise of the charged official. I do not think that there is any illegality and nor is any such law pointed out to me that if out of a larger Disciplinary Committee, a small Disciplinary Committee is constituted with some of the members of the larger Disciplinary Committee, for the holding of the enquiry proceedings then the enquiry proceedings are liable to be faulted with for that reason.

9. In view of the above, writ petition is a gross abuse of process of law and the same is therefore dismissed with costs of ₹20,000/-. Costs can be recovered by respondent No.2 in accordance with law.

VALMIKI J. MEHTA, J

JULY 08, 2013

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