

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(207)

CWP No.8412 of 2013 (O&M)
Date of Decision:- 18.09.2015.

Rakesh Kumar Gupta

.....Petitioner

Versus

UHBVNL and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. J.K.Goel, Advocate for the petitioner.

Mr. P.S.Poonia, Advocate for respondents No. 1, 2 and 4.

P.B. BAJANTHRI, J.(Oral)

In this petitioner, the petitioner has prayed for the following relief:-

“a) writ in the nature of certiorari for quashing of impugned charged sheet dated 10.01.2011, 28.01.2011 and 18.11.2011 attached as Annexure P-5, P-6, and P-9 and further the show cause notice dated 20.09.2012 attached as Annexure P-17 are illegal, arbitrary, unconstitutional, iniquitous, against the principles of natural justice, against the rules and against the law.”

The petitioner was appointed as ASSA on 19.01.1972 in the

then Haryana State Electricity Board (for short “HSEB”) now Uttari Haryana Bijli Vitran Nigam Limited (for short “UHBVN”). The petitioner attained age of superannuation and retired from service on 31.08.2009 from the office of the Sub Urban Division No. 2, UHBVN, Karnal as Sub Divisional Officer. His retiral benefits were not settled. Therefore, he has filed petition before this Court which was numbered as CWP No. 3068 of 2010. During pendency of the said writ petition, charge sheets were filed against the petitioner in a disciplinary proceeding. Accordingly, the petitioner was directed to question the charge-sheet if he is aggrieved, thus the aforesaid CWP was disposed of vide orders dated 10.01.2011, 28.01.2011 and 18.11.2011 (Annexure P5, P6 and P9 respectively). The petitioner was subjected to disciplinary proceedings and thereafter on 20.09.2012 show cause notice was issued seeking petitioner's explanation (Annexure P17). Since there was no interim order against the aforesaid charge memos in this CWP, the disciplinary proceedings namely 10.01.2011 and 28.01.2011 were ended in imposing penalty of recovery. Insofar as dated 18.11.2011 disciplinary proceeding is concerned , the matter is still pending consideration before the authorities. No action has been taken pursuant to show cause notice dated 20.09.2012 vide Annexure P-17 till date, in other words, it is pending consideration. Thus, the petitioner is aggrieved by the afore-mentioned Annexure P5, P6, P9 and P17.

Learned counsel for the petitioner mainly contended that the charges in all the three disciplinary proceedings are very vague which do not contain ingredients like date and events of the charges. Therefore, the charge

memos are liable to be set aside. It was further contended that petitioner has retired from service on 31.08.2009 therefore, the respondents' hands are tied due to Rule 2.2 B of Punjab Civil Services Rules, Volume II to initiate disciplinary proceedings against the petitioner. It is further submitted that insofar as second show cause notice dated 20.09.2012 vide Annexure P-17 is concerned, he has submitted his explanation against enquiry initiated on 28.01.2012 and it was ultimately concluded on 09.09.2013 by which recovery has been ordered. Therefore, learned counsel for the petitioner submits that on the aforesaid contentions the initiation of enquiries are to be set aside.

On the other hand, learned counsel for the respondents submitted that the petitioner had misappropriated respondents' money to the tune of lacs of rupees which has been narrated in the charge memo/statement of allegations. Therefore, there is no infirmity in the charge memo to set aside. The determination of amount in the statement of allegations was pursuant to office of the Chief Auditor, UHBVN, Panchkula Rohtak and the Chief Accounts Officer/Administration, UHBVN, Panchkula. In view of these facts and circumstances, the charges are not vague as contended by the petitioner's counsel. It was further contended by the respondents' counsel that the petitioner take shelter under Rule 2.2 B of Punjab Civil Services Rules, Volume II, for the reasons that the allegations stated in the charge memo are relating to 4 years old i.e., prior to petitioner's date of retirement.

Heard learned counsel for the parties.

Short question for consideration in this matter is relating to

interference in the matter of charge memo. Ordinarily Court will not interfere in respect of charge memo is concerned. In a disciplinary proceedings the Court can interfere in matter of charge memo only on the ground of competency and vagueness of the charge or any violation of rules. In the present case, having regard to fact that in all the three charge memos dates and events are not forthcoming. In the absence of specific charge that the petitioner had committed so and so mis-conduct on so and so date while working in so and so office amounts to vagueness in the charge.

Apex Court in the case of ***Surath Chandra Chakrabarty versus State of West Bengal*** reported in (1970)3SCC 548 held as follows:-

“5. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the-charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given a further

opportunity at the stage of-the second show cause notice to adduce any further evidence if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Art. 311 (2) of the Constitution as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges, must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations current findings against the respondent on that point. The resupplied to him. In this situation, for the above reason alone, the trial judge was fully justified in decreeing the suit.”

In the case of ***Transport Commissioner, Madras 5 Versus Thiru A.Radha Krishna Moorthy*** reported in (1995)1SCC 332 held as follows:-

“9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of

particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to GOMs 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf.

10. *We are, therefore, of the opinion that the judgment of the Tribunal is right insofar as it holds that the charges communicated to the respondent are vague. In the ordinary course we would have directed the disciplinary authority or the authority which framed the charges to particularise the charges and then to proceed with the enquiry but it appears that the respondent has hardly about seven or eight months to go for retirement. Having regard to the facts and circumstances of the case, we are of the opinion that the matter should end here.”*

In the case of ***The Government of Andhra Pradesh and others versus A. Venkata Rayudu*** reported in 2007(1) SCC 338 held as follows:-

“9. *We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any*

material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge No. 1, what is mentioned is that the respondent violated the Orders issued by the Government. However, no details of these Orders have been mentioned in Charge No. 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the G.O which is said to have been violated by the respondent, the number of that G.O, etc. but that was not done. Copies of the said G.Os or directions of the Government were not even placed before the Enquiry Officer. Hence, Charge No. 1 was not specific and hence no finding of guilt can be fixed on the basis of that Charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessor. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.”

In the case of **Anant R.Kulkarni Versus Y.P. Education Society and others** reported in 2013(3)SCT 188 held as follows:-

“9. In Surath Chandra Chakravarty v. The State of West Bengal, AIR 1971 SC 752 this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:—

“The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance

which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.”
(Emphasis added)

10. Where the chargesheet is accompanied by the statement of facts and the allegations are not specific in the chargesheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a chargesheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the chargesheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges”

In view of the aforesaid decisions of Apex Court read with charges framed in the impugned charge memos, charge memos are to be set aside. The petitioner's contention that while issuing all the 3 charge memos vide Annexures P5, P6 and P9, there is violation of Rule 2.2B of Punjab Civil Services Rules, Volume II. It is to be noted that Rule 2.2 B of Punjab Civil Services Rules, Volume II can be invoked only where the allegations are relates back to 4 years old from the date of retirement i.e. prior to petitioner's date of retirement. Reading of the charge memo does not disclose the date of allegation therefore, question of invoking Rule 2.2.B of the Punjab Civil Services Rules, Volume II is not correct. Therefore, the contention of the petitioner that the charge memos are in violation of Rule 2.2B of the Punjab Civil Services Rules, Volume II is rejected. The petitioner has questioned the show cause notice dated 20.09.2012 vide Annexure P17. It is part and parcel of enquiry initiated dated 28.01.2011 Annexure P-6. If the Annexure P6 is set aside consequently Annexure P17 is also required to be set aside. Perusal of the charge memo reveals that the ingredients of charge is not forthcoming like dates and events of the allegations.

Having regard to the decisions of the Apex Court read with factual aspects of the present case (charge memos). The impugned charge memos and show cause notice vide Annexures P5, P6 P9 and P17 dated 10.01.2011, 28.01.2011, 18.11.2011 and 20.09.2012 are set aside.

I would have given liberty to initiate disciplinary proceedings in accordance with law. However, due to death of the petitioner-Rakesh Kumar

Gupta who has passed away on 29.01.2015, his LR's have been brought on record to prosecute this petition. It is impracticable to initiate disciplinary proceedings against LR's at this juncture. In view of these facts and circumstances, question of holding enquiry against dead person is impermissible. All the retiral benefits shall be released to the LR's of the petitioner within a period of 6 months along with interest @ 8% per annum.

Accordingly, the writ petition is disposed of.

18.09.2015
pooja saini

(P.B.BAJANTHRI)
JUDGE