IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 7606/2014 & C.M.No.17918/2014 (stay)**

9th January, 2015

DR. AMIT CHAKRAPANI ..... Petitioner

Through Mr.Asish Nischal, Advocate.

versus

DAV COLLEGE MANAGING COMMITTEE & ANR. ..... Respondents

Through Mr.B.K.Khurana with Mr.Gaurav Malik, Advocates.

CORAM:
MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Inspite of a catena of judgments of the Supreme Court, as well as this Court, that when departmental enquiry commences, the charged employee cannot rush to the court for seeking quashing of the charges inasmuch as merits of the issues are determined at the conclusion of the enquiry by the departmental authority, however, certain litigants in order to delay and drag the departmental enquiries, do this, one such person being the petitioner against whom article of charges have been issued with respect to financial misappropriation running into lacs of rupees.

2. With respect to the aspect that the courts of law should not be approached at the stage of issuing of the charge-sheet notice on the ground

of lack of jurisdiction or some other equal issue has been decided by me in the case of ***Dr.Muhammad Iqbal Vs. Union of India & Ors***. in W.P.(C) No.4222/2013 on 08.7.2013 wherein I have referred to the judgments of the Supreme Court and held that the departmental enquiries cannot be scuttled by challenging the same at the stage of issuing of the charge-sheet. The relevant paras of the said judgment read as under:-

> "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.
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> 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:-
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>> "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)
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> 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**).
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> 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).**
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> 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 jeopardise 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."

3. Learned counsel for the petitioner very strenuously argues that the impugned memorandum of charges dated 29.9.2014 issued against the petitioner is without jurisdiction by placing reliance upon Rule 38 sub-Rule 25(i) of the Statute isused under the Maharshi Dayanand University Act, 1975 (in short 'the Act') under which the respondents' college is functioning. Relying upon this Rule 38 sub-Rule 25(i) of the Statute, it is argued that this sub Rule requires that the governing body/Managing Committee has to be one which is approved by the university and since in this case the governing body/Managing Committee has not been approved by the university as shown from the reply given to an RTI query on 22.8.2014 (filed as Annexure P-3 to the writ petition) hence the departmental proceedings should be quashed. What is therefore argued is

that the governing body/Managing Committee which has issued the memorandum of charges dated 29.9.2014 is not a governing body/Managing Committee as it has not been approved by the university in terms of the Rule 38 sub-Rule 25(i) of the Statute, and hence the said body was incompetent to issue the memorandum of charges.

4. Before taking up the technical arguments urged on behalf of the petitioner, at this stage I would like to refer to the article of charges which allege the misappropriation by the petitioner of an amount of over Rs.70 lacs from the fees etc. of the respondents' college. These article of charges read as under:-

" **Article of Charge**

1. That as per the statement of the ICICI Bank, Sec. 16-A, Faridabad Mr.Harish Rawat had taken a home loan of Rs.20,49,400/- against property No.702, Akashdeep, CGHS Ltd., Plot No.2, GH-2, Sec. 21-D, Faridabad. The EMI was fixed at Rs.22,185/- against the said loand taken w.e.f. 15.06.2010 onward. Mr.Harish Rawat, System Analyst, DAVIM, Faridabad in his statement on Non-Judicial stamp paper has confirmed that it was Dr.Amit Chakrapani, Associate Professor, DAVIM, Faridabad who had taken loan in his i.e. instalments but he (Mr.Harish) was not aware of the source of repayments made by Dr.Amit Chakrapani against this loan.

   Dr.Amit Chakrapani used to take cash payment of Rs.22,185/- for making monthly payment towards EMI of the aforesaid loan out of daily fee collection as per the fee collection sheet maintained in the Accounts Department of the Institute for the period April 2012 to October 2012. This amount of Rs.22,185/- x 7 = 1,55,606/- was paid towards full and final settlement of the loan on 06.11.2012 to the ICICI Bank. Thus payments of the instalments of the Housing Loan was being made by Dr.Amit Chakrapani out of the fees collected from the students of the Institute. The EMI paid against this loan is also mentioned in the hand written diary of fees collection and disbursement maintained by Mr.Ankit

Anand who is also associated in the misappropriation if Institute's funds.

Thus his aforesaid conduct of taking loan in name of Shri Harish Rawat i.e. benami name and misappropriation cash fee collected from the students of the institute amounts to breach of trust, cheating, fraud and dishonestly misappropriation of funds committed by him and is thus unbecoming of an employee of the DAV Organisation.

2. That following fee collection cash of the Institution was deposited by Dr.Amit Chakrapani in PNB, NH-3, NIT, Faridabad branch in the account of Mayank Puri.
   (i) Rs.20,000 on 26.10.2012
   (ii) Rs.8,500 on 27.10.2012
   (iii) Rs.13,200 on 05.12.2012
   (iv) Rs.26,200 on 08.01.2013
   (v) Rs.25,000 on 18.02.2013
   (vi) Rs.29,100 on 01.03.2013
   Total Rs. **= 1,22,300/-**

   Mr.Mayank Puri is reported to be a resident of Pehowa i.e home town of Dr.Amit Chakrapani, Bank statement of Mr. Mayank Puri shows that the aforesaid cash amount of Rs.1,22,300/- were deposited by Dr.Amit Chakarpani in his PNB, NH-3, NIT, Faridabad account. The said amount was taken by Dr.Amit Chakrapani from Ms.Nishu Bareja, Fee Cordinator for his personal gain for depositing the same in the bank account No.08170001000313428 maintained in a benami name of Shri Mayank Puri. The dates of having taken the money from Ms.Nishu/Day Book tallies with the dates on which the amount was deposited in the name of Shri Mayank Puri i.e. benami name in the PNB, NIT, Faridabad. It is thus evident that Dr.Amit Chakrapani as In-charge of Fee Collection had taken the money from Ms.Nishu Bareja which she had collected as fees from the students, thus he dishonestly misappropriated the said amount of Rs.1,22,300/- for his personal gain. This amount was subsequently withdrawn through ATM on the various dates. This conduct of Dr.Amit Chakrapani amounts to unbecoming of an employee of the DAV Organisation.

3. That the Fee Collection record kept by Accounts Department of the Institute shows that a sum of Rs.50,000/- was deposited on 01.12.2012 in ICICI Bank, 5E-B.P. Railway Road, Faridabad with the abbreviation- "ACP" indicated in the Day Book maintained in the Accounts Department. On further investigations from the Bank statement of Dr.Amit Chakrapani with ICICI Bank, it was found that Rs.50,000/- was

deposited in cash on 03.12.2012. It is thus evident that Dr.Amit Chakrapani had taken the DAV Institute money out of the Daily Fee Collection, as indicated in the Day Book, for his personal gain and thus dishonestly misappropriated cash of Rs.50,000/-. This act constitutes serious misconduct on his part and unbecoming of an employee of DAV Organisation.

4. That as per the Lease Agreement entered into between Shri Rajiv Aggarwal, owner of House No.327, Sector-46, Faridabad and Dr.N.K.Sharma, Principal Director of DAVIM, dated 30.01.2008 by virtue of which the said premises was taken on lease and accordingly, a security of Rs.1,35,000/- was paid by the Institute. The amount of rent paid, was booked in the Institute Books of Account under the Head 'Hostel Rent' upto March 2011 and TDS was accordingly deducted.

   Dr.Amit Chakrapani has been residing at the above address i.e. House No.327, Sec. 46, Faridabad since February 2008, although he was not entitled to stay in the said premises as per the rules. Thus he was unauthorizedly staying in the said premises in connivance with Late Dr.N.K.Sharma, Principal Director, DAVIM, Faridabad.

   As it was evident that Dr.Amit Chakrapani who was using this house unauthorizedly for his residence and from April 2011 the rent of Rs.60,000/- p.m. for the said premises, was being paid by him out of the fee collected in the Institute by making cash draft from the PNB, NH-3, Faridabad of Rs.54,000/- p.m. (after deducting TDS of Rs.6000/- being deposited out of the Institute funds). This fact also stands corroborated with the hand written diary of Mr.Amit Anand and affidavit given by Ms.Nishu Bareja, and the TDS Certificate issued by the Institute for the financial year 2012-13. The Certificate dated 17.07.2013 on the letter head of the DAV Institute shows that Rs.70,000/- and Rs.1,25,000/- were paid in cash for rent of this house for the months of April 2013-July 2013. This money was taken by Dr.Amit Chakrapani from the fee collected at the Institute Accounts Office. Thus it is evident from the aforesaid that he has been unauthorizedly staying in the said house for which he was not entitled, and paying rent for the said house, out of the fee collected from the students. This act of unaughorizedly staying in the house for which he was not eligible to stay, and paying the house rent to the landlord out of the fees collected from the students amounts to personal gain and dishonestly misappropriation of Institute's funds which amounts to unbecoming of an employee of the DAV Organisation.

5. That while finalizing the balance sheet for the year 2012-2013 fees

collection receipts issued to the students were reconciled at the time of audit and it was found that an amount of Rs.69,26,262/- had not been accounted for. While functioning as the In-charge fee collection, you collected fee in cash from the various students through Ms.Nishu Bareja and others during the financial year 2012-13 amounting to Rs.69,26,262/- by issuing either duplicate receipts for the lesser amount or did not issue receipt and in other case, falsified the record evidently with malafide intention and thus misappropriated the funds of the Institute. Thereafter Mr.Rajesh Bhatia stated in his affidavit to prove the aforesaid fact. Mr.Rajesh Bhatia mentioned in his Affidavit that Dr.Amit Chakrapani directed him to take out the original fee receipt from the Accounts Department and handover to Mr.Ankit Anand, an accomplice in the misappropriation of the Institute funds and further as per the statement of Mr. Sucheendra Nath, duplicate receipt books were prepared on Dr.Amit Chakrapani's instruction to adjust the cash of Rs.69,26,262/- in the books of accounts. The original receipt book from serial no.9100 to 18000 were handed over to Mr.Rajesh Bhatia on the direction of Dr.Amit Chakrapani and further given to Dr.Amit. Thus he collected the said amount of Rs.69,26,262/- from Institute's fund for his personal gain by falsifying the accounts, by issuance of duplicate receipts for the lesser amount or did not issue receipts, and in other cases falsified the record with dishonest intention, and this act constitutes serious misconduct on his part of unbecoming of an employee of DAV Organisation.

6. That Ms.Nishu Bareja, Counselor (working for fee collection in coordinatin with Mr.Ankit Anand) of the Institute in her statement on non-judicial paper has confirmed that either some duplicate receipts (fictitious) or fees receipts showing of a lessor amount in the office copy vis-a-vis original receipt were issued to the students or no receipts were issued in some cases for the period April 2013 to August 2013. She confirmed that Rs.40,08,140/- which she was collected by her from the students as fees was handed over to Dr.Amit Chakrapani (In-charge for fee collection) and his accomplice Mr.Ankit Anand (Co-ordinator for fee collection) and some time to Mr.Rajesh Bhatia for their personal use or of late Dr.N.K.Sharma. The said money was received from Ms.Nishu Bareja for their personal gain and thus Dr.Amit dishonestly misappropriated the said amount for personal gain and thus guilty of misappropriation of Institute's funds which act amounts to unbecoming of an employee of DAV Organisation.

7. That Dr.N.K.Sharma had issued two cheques of Rs.100,000/- each, one in favour of Mr.Sunil Kumar and another in favour of Sudhir Kumar which were further forged as Rs.41,00,000/- (cheque No.044695) and for

Rs.71,00,000/- (Cheque No.044696). Dr.N.K.Sharma very well knew that these cheques were forged, he still chose to deliver these two cheques to Mr.Sunil Kumar and Mr.Sudhir Kumar. Mr.Sunil Kumar and Mr.Sudhir Kumar presented the said cheques to the Bank which were dishonoured due to the forgery and the bank had returned these cheques to them. Since these two dishonoured cheques were in possession of Shri Sunil Kumar and Shri Sudhir Kumar, they issued a legal notice to Dr.N.K.Sharma and threatened to file police complaint against him for the forgery of cheques. Further Dr.N.K.Sharma knowing the consequences of police case, for issuing and delivering forged cheques, entered into a settlement with Shri Sunil Kumar and Shri Sudhir Kumar for getting the original cheques back. Accordingly a 'full and final settlement' prepared by Dr.Amit Chakarpani dated 8th September 2013, which was entered into between Mr.Sunil Kumar, Sudhir Kumar and Dr.N.K.Sharma in presence of Dr.Amit Chakarpani by payment of Rs.21,00,000/- from **Institute's funds** to obtain the original cheques back. It shows that Dr.N.K.Sharma and Dr.Amit Chakarpani had been adopting dubious and circuitous methods evidently to promote their personal unexplained gains.

Thus it is evident that Dr.Amit Chakrapani is party to the written 'Resolution and statement' in his own hand writing and is signed by him as a witness to the aforesaid settlement. This clearly indicates that Dr.Amit Chakrapani was fully aware about misappropriation of DAV Institute's fund and instead of taking care of the Institute's funds and instead of report the matter to the higher authorities in regard he accompanied Dr.N.K.Sharma in is act of forgery and misconduct, and is thus guilty of unbecoming of an employee of DAV Organisation.

8. That Sh.Amit Chakrapani while functioning as in-charge for fee collection/Officiating Principal, DAV Institute of Management, Faridabad during the period w.e.f. 1-04-2013 to 30-06-2013 had collected cash fee through Ms. Nishu Bareja to the tune of Rs.40,65,757/-. Cash to the tune of Rs.14,04,865/- only was deposited with the bank. The balance amount of Rs.26,60,892/- has been shown as paid to various people which included Rs.9,01,990/- taken by Dr.Amit Chakarpani. She further stated that out of Rs.26,60,892/- an amount of Rs.901990/- was either taken by Dr.Amit Chakarpani, In-charge of fees collection or were issued to other persons on his direction and thus he is guilty of grave misconduct of unbecoming an employee of DAV Organisation."

5. Therefore, there are grave charges against the petitioner of having

misappropriated huge amounts of over Rs.70 lacs from the respondent college and the merits of which aspect of course will be gone into in the departmental proceedings.

6. Let me now turn to the argument urged on behalf of the petitioner that the memorandum of charges have to go because they are issued by the governing body/Managing Committee which has not been approved by the university. No doubt, the issue urged on behalf of the petitioner will be an aspect of jurisdiction if the body issuing the memorandum of charges had no jurisdiction to issue the same, however, I put it to the counsel for the petitioner that whether the governing body which has issued the article of charges is the same governing body/Managing Committee which had appointed the petitioner in terms of the appointment letter dated 08.9.2009, and if it is the same governing body/Managing Committee which is not approved by the university, then even the appointment of the petitioner will have to go because it was also made by an illegal governing body/Managing Committee of the respondents' college. Counsel for the petitioner concedes that the petitioner was appointed by the same governing body which has issued the article of charges.

7. Therefore the issue against the petitioner becomes that the petitioner cannot approbate or reprobate i.e he cannot have the benefit of appointment

given by the same governing body/Managing Committee which he claims to be illegal, and then claim that the same governing body/Managing Committee yet cannot issue the memorandum of charges against the petitioner. Since the petitioner cannot approbate and reprobate, I refuse to allow the petitioner to argue that the memorandum of charges dated 29.9.2014 are issued without jurisdiction, and if they are issued without jurisdiction, then in fact the appointment of the petitioner itself is without jurisdiction and the petitioner must in fact leave his employment because the employment itself will be illegal having being effected by the same governing body/Managing Committee which is not approved by the university. Counsel for the petitioner however states that the petitioner does not want to leave the employment of the respondent college in view of the appointment letter dated 08.9.2009, and if that be so, I fail to understand as to how the petitioner can argue the lack of jurisdiction of the governing body/Managing Committee of the respondents in issuing the impugned memorandum of charges.

8. It is therefore clear that the petitioner is stated to be guilty of financial misappropriation running into over Rs.70 lacs and he wants to abuse the process of the law by scuttling the departmental enquiry initiated against him, and therefore this petition is dismissed with exemplary costs of

Rs.50,000/-. Costs can be recovered by the respondents from the petitioner in accordance with law.

VALMIKI J. MEHTA, J

JANUARY 09, 2015
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