

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

+ W.P.(C) No. 7938/2014

% **9th February, 2015**

SMT. SONA BABBAR @ SUSHMEETHAA Petitioner
Through: Mr.Manish Kohli, Advocate.
versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI &
ORS. Respondents
Through: Ms.Ferida Satarawala, Advocate for
GNCTD.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner who is an employee of S.D.Hari Mandir Girls Senior Secondary School (Govt. recognized and aided); represented by respondent nos. 2 to 4; impugns the charge-sheet/memorandum of charges dated 11.8.2014.

2. It is settled law that a charge-sheet can be challenged at the initial stage only when the charge-sheet is issued by an authority acting without jurisdiction or that the proceedings are being conducted by an authority without jurisdiction or there is such other fundamental ground for challenging the disciplinary proceedings, and without which position, this
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Court cannot entertain a writ petition questioning the issuance of the charge-sheet inasmuch as all aspects of merits have to be decided before the Enquiry Officer and not by this Court.

3. I have had an occasion to consider this aspect in the judgment in the case of ***Dr.Muhammad Iqbal Vs. Union of India and Ors.*** in W.P.(C) No.4222/2013 decided on 08.7.2013, and the relevant para nos.2, 3, 4 & 5 of which 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.

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.”

4. Before me, the following grounds were urged by the petitioner to challenge the disciplinary proceedings and the issuing of the memorandum of charges dated 11.8.2014:-

(i) The memorandum of charges has been issued not by the Disciplinary Authority which is required to do so under Rule 120 of the Delhi School Education Rules, 1973, and the same has only been issued by the Manager of the School, and therefore the memorandum of charges is issued by an authority without jurisdiction and therefore bound to be quashed;

(ii) It is argued that the Enquiry Officer has been appointed even before the decision of the Disciplinary Committee in issuing the memorandum of charges.

(iii) The Enquiry Officer who has been appointed in this case has been appointed even before the school considered the replies dated 25.8.2014 and

15.9.2014 given by the petitioner to the memorandum of charges, and thus the Enquiry Officer's appointment is liable to be quashed inasmuch as the appointment of an Enquiry Officer before considering the replies of the petitioner shows a clear-cut bias on the part of the school to impose penalty upon the petitioner.

5. On behalf of the petitioner, in support of the arguments, reliance is placed upon the judgment of the Supreme Court in the case of *State of Punjab Vs. V.K.Khanna and Ors. AIR 2001 SC 343*, and the paras of this judgment which are relied upon by the petitioner are para nos. 8, 33 & 34, which read as under:-

“8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise.

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33. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceedings cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or malafide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law Courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It

is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law Courts ought to rise up to the occasion and the High Court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias – What bias means has already been dealt, with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindse viz. : the inquiry shall proceed irrespective of the reply – Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be as to whether a further Inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative – the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr.Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.”

6. The school has filed before me the copies of the Minutes of the Meetings of the Disciplinary Action Committee dated 08.8.2014 and 27.9.2014. These Minutes of the Meeting read as under:-

“ Minutes of the Disciplinary Action Committee Meeting held on 08.08.2014 at 2.00 p.m. in the premises of S.D.Hari Mandir, Girls Sr. Sec. School, Desraj Bhatia Marg, Nabi Karim, New Delhi-110 055

The date of Disciplinary Action Committee Meeting was fixed as 07.08.2014, but due to the busy schedule of Mr.S.K.Saraswat-E.O. Zone-27 (DE's Nominee), meeting was postponed and held on 08.08.2014, today, in the Manager's Office in the school premises. The following members were present for the meeting:-

S.No.	Name	Designation
1.	Sh.Prakash Chander	Chairman
2.	Sh.Pawan Kumar Bhatia	Manager
3.	Sh.S.K.Saraswat DE's Nominee	E.O. Zone-27
4.	Ms.Anita Jain	Principal, S.D. Hari Mandir, Girls Sr. Sec. School, Desraj Bhatia Marg, Nabi Karim, New Delhi-110055
5.	Smt. Meenu Ahuja	Staff Representative

As per decision of the Disciplinary Action Committee Meeting dated 26.05.2014. The Manager of the school placed the additional chargesheet having the Memorandum Of charges along with 40 (Forty) Annexures are placed before the Disciplinary Action Committee and all the points of chargesheet have been discussed in detail by the Disciplinary Action Committee members.

The Manager of the school authorized to send the chargesheet to the charged official and two weeks' time to be given for submitting the reply of above said Articles of Charges.

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Minutes of the Disciplinary Action Committee Meeting held on 27.09.2014 at 2.30 p.m. in the premises of S.D.Hari Mandir Girls Sr. Sec. School, Desraj Bhatia Marg, Nabi Karim, New Delhi-110 055

The date of Disciplinary Action Committee Meeting was fixed as 26.09.2014, but Mr. S.K. Saraswat- E.O. Zone-27 (DE's Nominee) was on leave on 26.09.2014, so meeting was postponed and held on 27.09.2014, today, in the Manager's Office in the school premises. The following members were present for the meeting:-

S.No.	Name	Designation
1.	Sh.Prakash Chander	Chairman
2.	Sh.Pawan Kumar Bhatia	Manager
3.	Sh.S.K.Saraswat DE's Nominee	E.O. Zone-27
4.	Ms.Anita Jain	Principal S.D.Hari Mandir, Girls Sr. Sec. School, Desraj Bhatia Marg, Nabi Karim, New Delhi-110 055
5.	Smt. Meenu Ahuja	Staff Representative

As per decision of DAC meeting dated 08.08.2014, the manager of the school issued the detailed chargesheet to Mrs.Sona Babbar on dated 11.08.2014 with reference no.323/14. In reply to that the Charged Official submitted reply dated 25.08.2014 in which she made request to supply some Annexures as the same are not legible and requested to give two weeks time to file a detailed reply to the memorandum of charges.

In reply to above, all the documents were supplied to the Charged Official vide letter no.351/14 dated 27.08.2014. A detailed reply of all the charges was submitted by the charged official on dated 15.09.2014. The reply of the Charged Official discussed in detail by the D.A.C. members and for sake of natural justice it was unanimously decided to appoint an independent Inquiry Officer.

After discussion it was unanimously decided that Mr.K.C.Arora (Ex.Education Officer) may be appointed as Inquiry Officer. The Manager was authorized to issue letter to the official Sh.K.C.Arora who has been appointed as Inquiry Officer for enquiring the matter in detail and to submit the report within two months.” (underlining added)

7. A reading of the aforesaid Minutes of the Meetings of the Disciplinary Action Committee shows that the contention of the petitioner that the Disciplinary Committee did not issue the memorandum of charges is misconceived and that the memorandum of charges has been issued only by the Manager and not by the Disciplinary Committee, inasmuch as, the Minutes of the Meeting dated 08.8.2014 shows that the Disciplinary Action Committee has decided on issuing of the memorandum of charges, and the Manager who has signed the memorandum of charges dated 11.8.2014 has done so only in terms of the delegation given to the Manager vide the Minutes of the Meeting of the Disciplinary Action Committee dated 08.8.2014. Obviously, it cannot be expected that every member of the Managing Committee must sign the show cause notice/ the memorandum of charges, and surely it is sufficient in law if the Disciplinary Committee authorizes a particular person to issue the charge-sheet. The first argument urged on behalf of the petitioner is therefore rejected.

8. The second argument urged on behalf of the petitioner that the Enquiry Officer has been appointed against her even before issuing of the

charge-sheet is again an argument without merit because the Enquiry Officer in this case has been appointed in terms of the Minutes of the Meeting dated 27.9.2014, and which is definitely subsequent to issuing of the memorandum of charges dated 11.8.2014. Therefore, on facts, the petitioner is not correct in arguing that the Enquiry Officer has been appointed even before the issuing of the memorandum of charges dated 11.8.2014. The second argument urged on behalf of the petitioner is also therefore rejected.

9. The argument of bias urged on behalf of the petitioner will also stand rejected because the argument of bias was that the appointment of the Enquiry Officer was even before considering the replies of the petitioner and which shows bias on the part of the school, however, the aforesaid Minutes of the Meeting dated 27.9.2014 shows that the Enquiry Officer was appointed on 27.9.2014 i.e after the Disciplinary Action Committee having seen the replies of the petitioner dated 25.8.2014 and 15.9.2014.

10. I may note that it is not as if a Managing Committee of the School has to pass a judgment of giving reasons by holding that the replies given by the charged official/petitioner are found to be *prima facie* false on merits, and therefore the Enquiry Officer has to be appointed, and it is enough if the Minutes of the Disciplinary Action Committee shows that the replies of the

charged official/petitioner have been considered before appointing the Enquiry Officer, and which has so been done in this case.

11. Reliance placed by the petitioner upon the judgment of the Supreme Court in the case of *V.K.Khanna (supra)* will not help the petitioner because not only the facts of the said case are different, inasmuch as in that case the Enquiry Officer was to be appointed even before the reply of the charged official was considered to the show cause notice/charge-sheet, and in the present case the Enquiry Officer has been appointed after considering the replies of the petitioner/charged official, but also because the aspect of bias as alleged by the petitioner is a factual aspect and in the facts of the present case it cannot be said straightway without trial held by this Court that it must presume bias on behalf of the Enquiry Officer on the part of the school for quashing of the disciplinary proceedings. Such issue of fact necessarily will have to be urged and proved by the petitioner before the Disciplinary Committee, and not before this Court, inasmuch as this Court is not a fact finding body like the Enquiry Officer.

12. Dismissed.

FEBRUARY 09, 2015
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VALMIKI J. MEHTA, J