$~8

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

% ***Judgment Dated**: 1st August, 2016.*

W.P.(C) 7868/2014 & CM No. 18458/2014

UNION OF INDIA ..... Petitioner
Through : Mr. Ruchir Mishra, Mr.Sanjiv Kumar Saxena, Mr.Mukesh Kumar Tiwari, Advocates.

versus

PREM CHAND SHARMA ..... Respondent
Through : Mr. Navin Chawla, Mr. T. Singhdev, Advocates.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (*ORAL*)

1. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal (hereinafter referred to 'the Tribunal' in short) dated 9th January, 2014 by which an OA filed by the respondent challenging the impugned memorandum dated 28th September, 2011 was quashed.

2. The necessary facts which are required to be noticed for disposal of this writ petition are that the respondent was posted as a Divisional Engineer (Maintenance) in place of one Sh. RL Chandna with the BSNL, Gurgaon Telecom District. On 12/02/2003, BSNL, Gurgaon Telecom District issued notice inviting tender for laying of underground cables in Sector 4(RSU) Gurgaon and main exchange area of Gurgaon. The said tender for laying an underground cable work was awarded to one M/s S. Kumar Construction Company, New Delhi. The agreement No. GRG/Plg. Tender/UG cable laying/02/2002-2003/16 dated 9th May, 2003 was entered into between the

BSNL, Gurgaon Telecom District and M/s S. Kumar Construction Company, New Delhi in respect of the aforesaid work of laying underground cables in Gurgaon. As per the petitioner, the original cost of the tender work was limited to Rs. 21,21,883/-. The period of execution of the work was from 9th May, 2003 to 6th August, 2003. It is not in dispute that at the time when the aforesaid work of laying the underground cable was executed from 9th May, 2003 to 6th August, 2003, the respondent was not posted as Divisional Manager (Maintenance). It is also not in dispute that when the Contractor submitted his bill, the respondent was posted as Divisional Engineer (Maintenance). It is the case of the petitioner that against the original cost of the work, the limit was Rs.21,21,883/-. The department had issued work orders for an amount of Rs.17,50,000/-. The bills submitted by the Contractor were in excess of the value of the work orders. As such, the bills submitted by contractor were 45.93% higher than the approved cost i.e 21,21,880/-.

3. It is alleged that the respondent verified the bills without obtaining prior approval from the competent authority. It is also alleged that the respondent had not only verified the bills but also forwarded the same to SDE/DE (Planning) Gurgaon for passing and making payments. The above irregularity was noticed in the year 2005 with regard to the verification of the bills. Thereafter, in the 2006, a vigilance inquiry was ordered. A questionnaire/ explanation were issued to the respondent. He was allowed to inspect the documents. He was also provided the copies of documents as desired by him.

4. The respondent had furnished his reply to the questionnaire and the same was considered by the concerned authority in the Telecom Circle. In June, 2009 investigation report was examined by the concerned Circle and the same was furnished to the CVO of BSNL. The investigation report in

turn was considered by the CVO/BSNL and the same was furnished to the Department of Telecommunication (DoT) in March, 2010 recommending action against the respondent. Thereafter, the disciplinary authority raised certain queries in the matter and further necessary clarifications were sought from BSNL. The investigation report along with clarification was considered by the disciplinary authority. The matter was then referred to the Central Vigilance Commission (CVC) seeking their mandatory first stage of advice.

5. On 20th October, 2010, the CVC furnished its advice for an action under Rule 14 of CCA (CCS) for major penalty proceedings and CVC also sought certain clarifications in the matter and upon receipt of clarification, CVC considered the matter afresh in the light of these clarifications, a lenient view was taken and action for issuing administrative warning was recommended.

6. Based on the advice of CVC dated 18th May, 2011, proceedings under Rule 16 CCA (CCS) for minor penalty were initiated and a charge memo dated 28th September, 2011 was issued and the said charge memo was received by the respondent on 22nd February, 2012.

7. The main grounds urged by the respondent in OA were firstly, inordinate delay in issuing the Articles of Charge against the respondent and secondly, the articles of charge itself did not disclose any ground of mis-conduct. As reading of the charge would show that it was based on act of mis-conduct on the part of the respondent. The Tribunal agreed with the grounds which were raised in the OA and quashed the charge memo and all the proceedings arising there from which has led to the filing of the present writ petition.

8. Learned counsel for the petitioner submits that the learned Tribunal has exceeded its jurisdiction and has allowed the OA ignoring the settled position of law. Further, counsel contends that the Tribunal erred in not

appreciating that mere issuance of charge sheet/charge memo does not give rise to any cause of action because it does not amount to an adverse order. Reliance is placed on (2006) 12 SCC 28 in the case of ***Union of India and another v. Kunisetty Satyanarayan.***

9. It is also contended that the Tribunal has mis read the memo of charge. The memo of charge disclosed a cause of action as the respondent had ignored to point out the specific reasons to verify the bills which were valued higher than the amount of work awarded. The ground of harassment urged by the respondent and accepted by the Tribunal is not available as there would be harassment in every case of an inquiry. The Tribunal has also erred in holding that the charge sheet was issued without any application of mind as after obtaining the reply and upon detail investigation, the charge sheet was issued. It is also submitted that two promotions granted to the respondent between the years 2005 to 2012 by itself cannot be a ground for quashing the proceedings.

10. The counsel for the petitioner further submits that the Tribunal wrongly appreciated that the charge sheet against the respondent is self contradictory are erroneous as there is no contradiction in the charge sheet.

11. Learned counsel further contends that the Tribunal could not have quashed the memo of charge on the ground of delay as delay by itself cannot be a ground to quash the memo of charge.

12. Mr. Chawla, learned counsel appearing for the respondents submits that the Tribunal has correctly applied the law to the facts of the present case. There is no infirmity in the order of the Tribunal which would require interference in proceedings under Article 226 of the Constitution of India. The jurisdiction under Article 226 of the Constitution of India is wide and there is no absolute rule that the charges cannot be quashed either on the ground of delay or on the ground that they do not disclose any cause of

action. Mr. Chawla has highlighted the fact that the agreement pertains to the year 2003 and at the relevant time, the respondent was not posted in the department as he had joined only on 29th November, 2003. He submits that the documents placed on record would show that the respondent had forwarded three bills which are evident upon examining the note sheet dated 3rd January, 2004. The note sheet would show that a bill of Rs.4,32,041/- was withdrawn deliberately. The note at page 213 would show that the persons who forwarded the bills had deliberately withdrawn the third bill and the note filed at page 226 would show that the third bill of Rs.4,64,158/- was sent subsequently by SDE(Planning).

13. At this stage, it would be useful to place reliance on the statement of imputation of mis-conduct and mis-behaviour which reads as under:

> *"4. Shri P. C. Sharma, the then DE(Mtce-I), Gurgaon verified all the bills and forwarded to SDE/DE(Planning), Gurgaon for passing & making payment to the contractor. For the above act, Shri Sharma was found to be responsible for the following:-*
>
> *As per clause 34 read with clause 38 of the agreement, payment was required to be made against each completed work order after verification by DE(Mtce). The original cost of the tender was limited to Rs.21,21,883. However, bills amounting to Rs.30,96,496 were verified by Shri P. C. Sharma whereas, the work orders amounting to Rs.17,50,000/- only were issued by the department. Shri P. C. Sharma ignored to point out the specific reasons for verifying these bills having much more the value than the value of work orders. Shri P. C. Sharma failed to obtain the approval of the Competent Authority before verification of the bills and also failed to bring out discrepancy in rates.*
>
> *5. From the above narrated facts, it is evidently clear that Shri P.C. Sharma, the then DE(Mtce-I) Gurgaon, failed to discharge his duties and responsibilities in an*

> *effecting manner of the post he was holding at that point of time.*
>
> *6. Thus, the above act, Shri P. C.Sharma, the then DE(Mtce-I) Gurgaon committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and thus acted in a manner which is unbecoming of a Government Servant, thereby contravening the Rule 3(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964".*

14. Mr. Chawla, submits that the sequence of events would show that there was inordinate delay in issuing the memo of charge. The delay has not been reasonably explained and serious prejudice would be caused to the rights of the respondent in case, the charge memo is not quashed. Prejudice would be caused in view of fact, relevant records pertaining to the year of 2003 are not available which has been noticed by the Tribunal itself and for which the respondent cannot be blamed and penalized. He also contends that having regard to the nature of allegations coupled with the facts that there is gross delay, ends of justice would not be served in case the charge sheet is not quashed.

15. We have heard learned counsel for the parties. We have detailed the facts of this case in the pharagraphs aforegoing. The Tribunal has quashed the memo of charge primarily on two grounds. Firstly that the memo of charge has been issued after gross delay and secondly a reading of the charge memo including the imputation of charges do not disclose the cause of action neither does it disclose any mis-conduct on the part of respondent but falls in the domain of failure to discharge his duties in a responsible manner and thus amounts to only an omission.

16. We may take notice at this stage that the matter was referred to and considered by the Vigilance Department not once but on two occasions. In case of respondent herein, the CVC has opined "a minor penalty" to be

imposed. Copy of CVC advices dated 8th May, 2011 has been placed on record. In the backdrop of the fact that the contract pertains to the year 2003 and it is only in the year 2005 that the irregularity committed by the respondent surfaced while the charge sheet was served upon the respondent on 22nd February, 2012. The reasons for delay were explained by the petitioner herein by explaining that after the irregularity surfaced in the year 2005, a vigilance inquiry was ordered in the year 2006. Investigations were carried out, a questionnaire/explanation/show cause notice was issued to the respondent and the respondent had sought certain documents which were handed over and the investigations took time on account of extreme care and caution exercised on the part of the petitioner herein to ensure that the process was free, fair and impartial. After 2006, the next date provided was in June, 2009, when the investigation was examined by the concerned circle and the same was furnished to CVO of BSNL with the advice of receipt by 20th October, 2010. A fresh case was sent in 2010, this report was furnished to the department of telecommunication which had recommended again against the respondent herein which was referred to CVC in September, 2010 and again it was referred to CVC on 13th April, 2011. Upon reconsideration, the CVC recommended minor penalty proceedings and thereafter a charge memo was prepared on 28th September, 2011.

17. The learned counsel for the petitioner has also urged before us that law is well laid that generally Tribunal should not quash the departmental proceedings on the ground of delay in initiation of departmental proceedings. Counsel has also urged that the charge sheet should not be quashed as issuance of charge sheet by itself does not give rise to any cause of action and it does not amount to passing of an adverse order. In our view there can be no quarrel to the proposition which is sought to be urged by learned counsel for the petitioner. To quash a charge sheet on the ground of delay is

no doubt an exception. The Tribunal in our view has carefully analyzed the explanation rendered by the petitioner herein explaining the delay in issuing the charge sheet. The relevant paras of the order read thus:

> *15. From the background facts of this case, it is seen that some investigation was held in the case related to the tender for laying underground cables in Gurgaon during the period from 09.05.2003 to 06.08.2003. During the investigation, it was noticed that against the work orders for Rs.17,50,000 issued to the contractor for the works to be carried out in the respective Sub Divisions, the actual work was got executed to the tune of Rs.30,96,492 by the concerned SDOP (I,II & III). After the work was executed by 06.08.2003, the Applicant was posted there as DE (Maintenance-I) w.e.f. 29.11.2003. Initially the CVSs, vide its Memorandum dated 20.10.2010, made a general allegation that there were serious irregularities at every stage, i.e. during tendering/acceptance/execution of work and the mala fide on the part of the officials concerned could not be ruled out. The Commission, therefore, advised to take major penalty proceedings against almost all the officers involved in the work without identifying the individual irregularities. However, the Respondent-Department did not agree with the said advice without specifying the role of the individuals concerned. It was then that the alleged role played by the Applicant in the matter was identified. According to the Respondents, he had verified bills amounting to Rs.30.96 lakhs against Rs.17.50 lakhs work orders issued by the Department without obtaining the approval of the competent authority before verification of the bills but at the same time, they have also observed that the work of laying of cables was completed before he took over the charge as DE (Maintenance). The Disciplinary Authority considered the aforesaid alleged irregularity on the part of the Applicant as his failure to discharge his duties and responsibilities in an effective manner of the post he was holding at that point of time and to have committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and thus acted in a manner which is unbecoming of a*

Government Servant, thereby contravening the Rule 3(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964. Accordingly, the impugned Memorandum dated 28.09.2011 proposing to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 was issued to him. The following part of the imputation of misconduct against the Applicant is again reproduced for the sake of convenience:-

"5. From the above narrated facts, it is evidently clear that Shri P.C. Sharma, the then DE (Mtce-I) Gurgaon, failed to discharge his duties and responsibilities in an effecting manner of the post he was holding at that point of time.

6. Thus, by above act, Shri P. C. Sharma, the then DE(Mtce-I) Gurgaon committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and thus acted in a manner which is unbecoming of a Government Servant, thereby contravening the Rule 3(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964."

*16. In our considered view, the charge against the Applicant is self contradictory. While on the one hand it has been stated that the alleged misconduct committed by the Applicant was only his failure to discharge his duties and responsibilities in effective manner, on the other hand it says that it has been stated that there was grave misconduct on his part. As held by the Apex Court in J. Ahmeds case (supra), an act of omission or lack of efficiency or failure to attain highest standard efficiency in discharge of duty attached to the public office would not ipso facto constitute misconduct. Again, as held by this Tribunal in **S. A. Khans case (supra)** Non-performance of duties, which may have no element of unlawful behaviour, willful in character, improper or wrong behaviour, misdemeanour, misdeed, impropriety or a forbidden act, may some time amount to not carrying out the duties efficiency, but the same cannot be construed to be misconduct.*

18. On the question of delay in departmental proceedings, we deem it appropriate to refer to the decision rendered in the case of ***Andhra Pradesh and others vs. V. Appala Swamy, 2007 (14) SCC 49***, it was held as under:

> *"12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determinied on its own facts.*
>
> *The principles upon which a proceeding can be directed to be quashed on the ground of delay are:*
>
> *(1) Where by reason of the delay, the employer condoned the lapses on the part of the employee.*
> *(2) Where the delay caused prejudice to the employee. Such a case prejudice, however, is to be made out by the employee before the inquiry officer".*

19. The explanation which is sought to be rendered by the petitioner herein in our view shows that either the petitioner was not serious in carrying out the necessary investigation or they were convinced that no case was made out against the respondent herein. This we say for the reason that from the year 2005, when the irregularity was first detected, however, the charge sheet was served upon the respondent only in the year 2012. Since the entire charge sheet revolves on the question of over payment, the records pertaining to the tender would be of utmost importance, the important records pertaining to the tender were misplaced which was also noticed by the Tribunal. Ordinarily to quash a charge sheet is an absolute exception and we are conscious of the same, it is for this reason coupled with the ground of delay, we have also taken into account the file notings placed on record by the petitioner itself which show that initially, three bills were forwarded by the respondent and thereafter, SDE (Planning) had forwarded only two bills. The note sheet at page 236 reads as under:

"On scrutinizing the file, it is observed that three bill viz (i) SKC/GRG/03-04/10 Dt. 22-01-04 for Rs.464158/- (ii) SKC/GRG/03-04/30 Dt. 22-01-04 for Rs.342329/- & (iii) SKC/GRG/03-04/01 Dt. 12.12.03 for Rs.432041/- seems to be received in Planning Section on 30.4-04 as for N/37A & N/38.

Bill No. SKC/GRG/03-04/10 dt. 22-01-04 for Rs.464158/- at Sl. No. (i) above was withdrawn deliberately from the file with the intension to keep the amount of bills in excess enhancement limit of 25% of Tender. So that it remains in the limit of approval of worthy GMTD".

20. The charge sheet for misconduct must disclose:- (i) the rules of conduct which the employee has violated, the allegations containing sufficient details showing how he has violated the specified rules of conduct and how he has been prima facie found to be blameworthy requiring his explanation and (ii) the discipline rule under which the charges against him are required to be inquired into.

Apart from material details a charge sheet must contain charges which are definite. Charging an employee with any allegation of misconduct is a serious matter. It puts into question the employee's career. No half-hearted approach in the matter would be allowed by the Courts. A vague charge sheet does not meet the requirement of law and is liable to be quashed.

21. The Hon'ble Supreme Court has held that where the perusal of the charges does not disclose any misconduct, the Courts and Tribunals have competence to interfere. This view has been clearly pronounced in the decision of **Union of India vs. Upendra Singh [(1994)3 SCC 357].**

"Para 6 In the case of charges framed in a disciplinary enquiry 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 charge is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of their 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."

22. In the case of **DFO Vs. R. Rajamanickam [2000 SCC (L&S) 1100]** Hon'ble the Supreme Court after placing reliance on the judgment of Upendra Singh (Supra) annulled the Tribunal decision which quashed the charge sheet, and held that the interference with the charge sheet is possible only where the charge sheet read with its supporting imputations does not disclose any misconduct, and not on the ground that the alleged misconduct is not probable to have been committed by the delinquent. Truth or falsity of the charges does not give jurisdiction to interfere.

23. In the case of **H.B.Gandhi, Excise & Texation Officer-cum-Assessing Authority, Karnal vs. Gopinath & Sons [1992 Supp.(2)SCC312]** Hon'ble the Supreme Court highlight the scope of judicial review of chargesheet and held as under:-

"Judicial review, it is trite, is not directed against he decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision

itself".

24. We may note that the contract in question was awarded in May 2003 and the work was competed somewhere in August 2003. The respondent was posted as a Divisional Engineer (Maintenance) of the BSNL at Gurgaon in November 2003. The respondent had only verified the actual work executed by the contractor in accordance with the underground cable construction and verified the bills amounting to Rs.30.96 lakhs against Rs.17.50 lakhs work orders issued by the Department without obtaining the approval of the competent authority before verification of the bills. There was inordinate delay in conducting inquiry and disciplinary proceedings. The documents placed on record would show that the respondent had forwarded three bills which are evident upon examining the note sheet dated 3rd January, 2004. The note sheet would show that a bill of Rs.4,32,041/- was withdrawn prima facie deliberately. It is pertinent to note that the entire charge sheet revolves on the question of over payment, but some of the records have also got misplaced/destroyed e.g. none of the Measurement Book which is the most crucial and vital documents in any construction work, is untraceable in the records of BSNL as stated by CVC in its advice dated 18.05.2011. In our view regarding delay, relevant records not available and the nature of charge sheet has been considered by the Tribunal in allowing the O.A. and rightly so.

25. On the question that there is no misconduct, it is necessary to refer to the judgment of the Supreme Court in **Union of India v. J. Ahmed** [1979 (2) SCC 286]. The following passages found in paragraphs 9 and 11 of the judgment may be usefully extracted:

> *"Para 9.The words act or omission contemplated by Rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 (Conduct Rules for short). The Government has prescribed by Conduct Rules a code of*

conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty.... If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct...."

*Para 11: "Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster1). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers)]. This view was adopted in **Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway,Nagpur Division, Nagpur, and Satubha K. Vaghela v. Moosa Raza**. The High Court has noted the definition of misconduct in Stroud Judicial Dictionary which runs as under:*

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

26. In view of the aforementioned discussion, there is no ground made out to interfere with the Impugned judgement of the Tribunal. The impugned judgment rendered by the learned Tribunal is a well-reasoned judgment. The Tribunal has taken into consideration and dealt with all the grounds, which have been urged. Resultantly, we find no ground to entertain the present writ petition. Thus, there is no infirmity in the impugned judgment, which would require interference by this Court in proceedings under Article 226 of the Constitution of India. Accordingly, writ petition stands dismissed.

G.S.SISTANI
(JUDGE)

I.S.MEHTA
(JUDGE)

AUGUST 01, 2016
j