NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3568 of 2017

1. Arvind Kumar Namdeo S/o Late Shri G.L. Namdeo, Aged About 58 Years R/o Saikripa 144 A, Sector 2, Gitanjali Nagar, P. O. Sahankar Nagar, Police Station Civil Lines, Raipur, Chhattusgrh.

2. Ashok Kumar Verma S/o Late Shri Moti Lal Verma, Aged About 58 Years R/o H. No. 54/1367, Near Daulat Estate, Dangania, P. O. Sundar Nagar, Police Station Deendayal Upadhyay Nagar, , Raipur, Chhattisgarh.

3. Sanjay Mudaliar S/o Late Sshri B.P. Mudaliar, Aged About 49 Years R/o H No. 13, Nature City, Devpuri Road, Amlidih, P. O. Ravigram, Police Station New Rajendra Nagar, , Raipur, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary , Department Of Water Resources Mantralaya Mahahadi Bhavan, Naya Raipur, Chhattisgarh.

2. The Engineer- In - Chief, Department Of Water Resources, Civil Lines Raipur, Chhattisgarh.

---- Respondents

Shri H.C.Shukla, counsel for the petitioner/s.
Shri Satish Gupta, Govt. Advocate for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

13/10/2017

This petition, under Article 226 of the Constitution of India, has been filed by the petitioners, three in number, being officers of the department of Water Resources aggrieved by initiation of departmental enquiry by issuance of charge sheet on 17/08/2016 to them and placed on record as Annexure P/2 collectively. By the impugned charge sheet, departmental enquiry has been initiated against all the petitioners which centres around allegations pertaining to unrealistic survey report for estimation of earthwork in connection with construction of irrigation canal in Sub-Division - III, Tilda. The petitioners, during the relevant period, when the survey was carried out and the report submitted, were posted and working as Sub-Divisional Officer and Sub-Engineers.

2. Learned counsel for the petitioners argued that without any concrete and cogent material to form an opinion that misconduct was committed by the petitioners, only based on audit objection and report of Lok Lekha Samiti, enquiry has been instituted against the petitioner. It was contended that estimation based on survey is found to be different from the actual quantity of work executed through tender and the prevalent practice in the department is that in respect of different quantity of work, payments are made after due scrutiny of actual quantity of work executed under tender by the contractor. The next submission of learned counsel for the petitioners is that the petitioners had actually no role to play in the decision making and award of tender except some leveling work for the limited purpose of estimation of quantity of material as per the directions of the senior officials. It is further argued that the survey report which is said to be faulty and unrealistic in nature was not examined either by Controller Auditor General (CAG) neither by the Lok Lekha Samiti (Public Accounts Committee) of the legislature. The said survey report has also not been annexed along with the charge sheet and copy of the same has not been supplied to the petitioners despite demand and statement of allegations did not contain specific details as to how the survey report is unrealistic so as to support the allegations that without actual survey carried out, estimation was prepared casually or negligently resulting in financial loss.

3. Relying upon the decision in the case of **Whirlpool Corporation v. Registrar of Trade Marks and others, 1998 (8) SCC 1** and decision of this Court in the case of **Pushp Steels & Mining (Pvt.) Ltd v. State of Chhattisgarh**

decided on 22/07/2016, 2016 LawSuit 374, it is submitted that the departmental enquiry cannot be allowed to continue to the prejudice and peril of the petitioners. The obligation of application of mind to the reply in view of the statement of defence to the charges has also been given go-bye and the enquiry has been proceeded only to satisfy the CAG and Public Accounts Committee. According to the learned counsel for the petitioners, initiation of enquiry is in abdication of powers by the disciplinary authority and on mere dictate of the aforesaid parties, who are not the disciplinary authorities. The charge sheet, it is alleged, was drafted by the Executive Engineer who was not the competent authority and the same has been issued by the disciplinary authority to the petitioner without the least application of mind.

4. Before adverting to the submission of learned counsel for the petitioner, this Court deems it appropriate to refer to various decisions of the Apex Court in the matter of scope of interference by the Courts Tribunal at the threshold of enquiry seeking quashing of the charge sheet.

In the case of **Union of India and Ors. Vs. Upendra Singh**[1], delineating the scope of judicial review while dealing with the challenge to very initiation of departmental enquiry, it was held as under:

> "6. In the case of charges framed in a disciplinary inquiry 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 charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or

1 (1994) 3 SCC 357

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. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons5. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

> "Judicial review, it is trite, is not directed against the 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 authorized 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."

7.*Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is un-understandable how can that be done by the tribunal at the stage of framing of charges*? “ ....

In the case of **Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy**[2], it was held:

“7. So far as the truth and correctness of the charges is

2 (1995) 1 SCC 332

> concerned, it was not a matter for the Tribunal to go into-more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making-process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law."

In the case of **Dy. Inspector General of Police Vs. K.S. Swaminathan**[3], I was propounded as below:

> "**4**. It is settled law by catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would he a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct."................

The aforesaid well settled legal position with regard to judicial review in such

3 (1996) 11 SCC 498

matter has been restated time and again. In the case of **State of Orissa and Anr. Vs. Sangram Keshari Misra & Anr**.[4], it was authoritatively pronounced thus:

> "10. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as normally a charge sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority. (vide Union of India vs. Upendra Singh - 1994(3) SCC page 357). Therefore we reject the contention that the charge to have been quashed without reserving to the State to proceed in accordance with law.**"**

The said legal position has been well concretized in the case of **Secretary, Ministry of Defence and Ors. Vs. Prabhash Chandra Mirdha**[5], as below:

> "8. Law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the chargesheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon."......
>
> 9. x x x
>
> 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

4 (2010) 13 SCC 311
5 (2012) 11 SCC 565

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, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

11. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, 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 & Ors. v. Upendra Singh, (1994) 3 SCC 357).

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."

5. Keeping in forefront all the aforesaid settled position, I shall now advert to the

submission on the face of the charges leveled against the petitioners.

Upon perusal of the three charge sheet against each of the petitioners, what is *prima facie* disclosed on the facts contained in the charges and statement of allegations is that during the period the petitioners remained posted in connection with work of irrigation department in Bhatapara Canal construction, Sub-Division- III, Tilda, a survey was carried out between 20 – 27 kms. The survey was carried out by the petitioners and the report submitted on the basis of the said survey was made basis for inviting tender and execution of earthwork. The allegations against the petitioners are that the survey was not in accordance with the rules under the Work's manual. It is alleged that as against the estimated work of hard rock, soft rock and hard murum, the Contractor executed 19%, 197% and 132% of the actual quantity of work, which shows that the estimation was unrealistic and result of casual and negligent work. It is alleged that had the estimation done properly, the work could be executed for the cost of Rs.1.47 crores only instead of total cost of Rs.2.80 crores resulting in excessive payment of Rs.1.34 crores. In the statement of allegations, it is stated that there is vast difference between the quantity of work for which the contract was given and the actual work executed by the Contractor. It is also reflected from the charge sheet that there were certain complaints made to the responsible authorities, the Controller Auditor General of India and cognizance was also taken by Public Accounts Committee of the legislature who examined the matter and formed an opinion that loss of public revenue of more than one crore had taken place. On the basis of aforesaid *prima facie* material, the disciplinary authority decided to institute departmental enquiry against the petitioners leading to issuance of impugned charge sheet.

6. The submissions which have been made on the basis of averments of fact stated in the petition are the defence of the petitioners which cannot be looked into

at this stage. The charge sheet can neither be said to be vague nor it is a case where it can be said that even if all the statement of facts stated in the charge sheet are proved, no misconduct as defined in Rule 3 of the C.G. Civil Services (Conduct) Rules, 1965 would be made out. The petitioners are alleged to have acted against the spirit of work manual and financial code. The sum and substance of the allegations are that the survey report prepared by the petitioners was unrealistic which resulted in vast difference between the quantity of work for which contract was given and the actual work done by the Contractor (based on the report prepared by the petitioner and the actual work executed by the Contractor).

The submission that the disciplinary authority abdicated its function and acted only on the basis of CAG and Public Accounts Committee, only deserves to be rejected because the reports of the two high level committees amongst other materials are the basis for forming a prima facie opinion leading to initiation of departmental enquiry. The petitioners have ventured to state the facts of their defence in an attempt to seek indulgence of the Writ Court as disciplinary authority. Once this Court finds that *prima facie* case is made out and it is not a case of lack of jurisdiction, malafide or of no misconduct even if facts alleged are proved, interference in exercise of jurisdiction under Article 226 of the Constitution of India is not warranted in view of the settled legal position adumbrated in plethora of decisions of the Apex Court, referred hereinabove.

7. I do not find any material in this petition and therefore, this petition is dismissed in limine.

8. Before parting with the case, this Court would clarify that whatever the observations have been made, are only for the limited purposes of satisfying whether the case for interference at the initial stage of issuance of charge sheet is made or not and it should not be treated as any conclusive observation in proof of

charges against the petitioners. It would be open for the petitioners to raise all the defence which are raised in this petition and those which are available under the law and the disciplinary authority and the enquiry officer would be under an obligation to hold and conclude the enquiry in accordance with the applicable rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti