

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2323 of 2017

Mahadeo Katulkar S/o Late Shri Laxman Katulkar, Aged About 59 Years Posted As Principal Judge, Family Court District Dhamtari, Chhattisgarh, Presently Under Suspension With Headquarters At Raipur, District Raipur, Chhattisgarh

---- Petitioner

Versus

1. Honble High Court Of Chhattisgarh Through Its Registrar General, High Court Of Chhattisgarh, Bodri, Raipur Road, District Bilaspur, Chhattisgarh
2. Registrar General, High Court Of Chhattisgarh, Bodri, Raipur Road, District Bilaspur, Chhattisgarh
3. Registrar (Inspection & Enquiry) High Court Of Chhattisgarh, Bodri, Raipur Road, District Bilaspur, Chhattisgarh
4. Shri Arvind Singh Chandel, Registrar General, High Court Of Chhattisgarh, Bodri, Raipur Road, District Bilaspur, Chhattisgarh
5. Smt. Rajni Dubey, Registrar (Vigilance), High Court Of Chhattisgarh, Bodri, Raipur Road, District Bilaspur, Chhattisgarh
6. Shri Ravi Shankar Sharma, Principle Secretary, Law & Legislative Affairs Department, State Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Manoj Sharma and Shri K.Rohan, Advocates
For Res. No.1 to 3	:	Shri Dr. N.K. Shukla, Senior Advocate with Shri Praveen Das, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

06/10/2017

Heard.

1. By this petition under Article 226 of the Constitution of India, the petitioner has assailed legality and validity of initiation of departmental enquiry and

has prayed for quashing of charge sheet issued by 3rd respondent by the order of 1st respondent.

Vide impugned charge sheet, a departmental enquiry has been initiated against the petitioner on two articles of charges which are reproduced as below :

ARTICLE OF CHARGES

"1. X X X

2. During your tenure of posting as referred above, you had used filthy abusive and unparliamentary language in the name mother and sister against your subordinate Class-IV employees namely Shri Mukesh Kumar Razak, Shri Ajay Mourya, Shri Vikky Chouhan, Ku. Hemlata Yadav, Shri Sohan Sinha, Shri Narayan Prasad Harinkhede, Shri Shyam Lal Arya on many occasions and threatened to remove them from the services, thereby, caused mental torture and harassment to your subordinate employees.

3. You directed the Nazir not to allow Shri Mukesh Kumar Razak and Ku. Hemlata Yadav to put their signatures on the attendance register."

The gravamen of charges against the petitioner is that during the period of his posting as Judge, Family Court Dhamtari, he used filthy, abusive, unparliamentary language against seven of his subordinate Class-IV employees on many occasions and threatened to remove them from service, thereby causing mental torture and harassment. It is further alleged that he abused Ku. Hemlata Yadav, Peon with filthy language (details of which are given in the statement of imputation of misconduct). The petitioner is also alleged to have abused Narayan Prasad Harinkede, Driver, using very filthy language (details of which are given in statement of imputation of misconduct). It was also alleged that the petitioner also

abused Vikky Chouhan, Sonal Sinha, Ajay Mourya and Shyamlal Arya using filthy language (details of which are given in statement of imputation of misconduct).

Further submission is that he directed Nazir not to allow Mukesh Kumar Rajak and Hemlata Yadav to sign attendance register. Along with the charge sheet in Annexure-I, details of imputation of misconduct have been given. The list of documents and list of witnesses are given in Annexures-II & Annexure-III respectively.

2. Learned counsel appearing for the petitioner, referring to averments made in the petition and the grounds urged therein, canvassed before this Court that initiation of departmental enquiry against the petitioner is an attempt to forestall the enquiry into various complaint of irregular and illegal appointment. It is contended when the petitioner started enquiry into complaint of irregular appointments at the behest of the officer against whom allegation are leveled, the enquiry was initiated against the petitioner at the instance of respondents No. 4 to 6. According to learned counsel for the petitioner, enquiry against the petitioner has been initiated to provide protection and patronage to those Class- IV employees against whom complaint have been made and is motivated, predetermined at the instance of respondents No. 4 to 6. In order to support his submission, learned counsel for the petitioner has further drawn the attention of this Court to number of charge sheets issued against the petitioner, to submit that in order to harass and victimize the petitioner series of charges and enquiry have been hurled against him at the behest of respondents No. 4 to 6. One of the submissions to call in question the very institution of departmental enquiry is that in view of protective provisions contained in Section 11 of the Whistle Blowers Protection Act, 2011, the petitioner is protected against any victimization by initiation of proceedings on the ground of any disclosure or allegation of corruption or willful misuse of power/discretion.
3. Before proceeding to deal with the submission on the face of material

contained in the charge sheet and other connected documents placed on record, it is apposite to refer to various judicial pronouncement of the Apex Court in the matter of scope of judicial review against initiation of institution of a departmental enquiry against the delinquent employee.

4. The judicially evolved principles stated and re-stated in a few of the long list of celebrated decisions of the Supreme Court need to be referred to.
5. 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 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.

¹ (1994) 3 SCC 357

(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 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

² (1995) 1 SCC 332

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 be 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.”.....

3 (1996) 11 SCC 498

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

4 (2010) 13 SCC 311

5 (2012) 11 SCC 565

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, 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.”

6. The instant case requires to be examined in the light of aforesaid settled legal position.
7. In the present case, the two articles of charges, show that the petitioner is alleged to have used filthy abusive and unparliamentary language against large number of subordinate Class-IV employees details of which have been given in the statement of imputation of misconduct which show that there are specific allegation of the filthy language used by the petitioner against specific employee. The list of document contains affidavit statement of the employees as also preliminary enquiry report dated 23.8.2016 submitted by the Registrar (Inspection & Enquiry) of the High Court. The said preliminary enquiry report has also been placed on record as Annexure P-9 prepared by responsible officer of the Institution. A bare perusal of the said report shows that when complaint were made against the petitioner, before initiating departmental enquiry, a preliminary enquiry was conducted by the Registrar (Inspection & Enquiry). The statement of the employees who have alleged use of filthy and abusive language against them by the petitioner were recorded. Those statements have been specifically dealt with in the preliminary enquiry and based on this preliminary enquiry report, the decision was taken by respondent No.1 to initiate departmental enquiry against the petitioner. The petitioner's stand taken during preliminary enquiry and in reply to charge sheet is itself a matter of enquiry. The allegation do not pertain to performance of any

judicial function by the petitioner. It is essentially a matter of factual enquiry by recording evidence and appreciation thereof as to whether the allegation of using filthy and abusive language by the petitioner against several employees are motivated or not in the backdrop of events stated by the petitioner, which by itself, would be a matter of enquiry during the enquiry proceedings. The arguments based on provisions contained in Whistle Blowers Protection Act, 2011 is misconceived in law.

8. The petitioner has gone to the extent of making allegation against all the respondents officers of the Registry as also the Principal Secretary, Law and Legislative Affairs Department. It is not a case where the petitioner was making enquiry into complaint against various appointments made by these officers so as to say that these officers had any motive to falsely implicate the petitioner. Moreover, the decision to institute departmental enquiry against the petitioner was not taken by respondents No. 4 to 6 but by the High Court. The allegation of malafide are therefore absolutely baseless, without material and if I may say so, callous and reckless.
9. Applying the judicial parameters referred to herein-above in the conspectus of consideration of material on record, this Court finds that this petition is bereft of material. The petition, therefore, being frivolous, deserves to be dismissed and is accordingly dismissed in limine.

Sd/-
(Manindra Mohan Shrivastava)
Judge