

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2272 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, Bodr, 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, Principal 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 prayed for issuance of writ of certiorari to quash and set aside charge sheet dated 4.3.2017 and consequential departmental enquiry on pleadings

inter alia that initiation of departmental enquiry against the petitioner is an outcome of a concerted design and conspiracy at the behest of some of the judicial officers including respondents No. 3 to 6.

2. In the petition, it has been narrated that though the petitioner was due for grant of Super Time Scale, initiation of enquiry and explanation followed by institution of number of enquiries, illegally deprived him from the benefit of higher pay scale. It is also stated in the petition that during the period the petitioner was posted as Presiding Judge, Family Court Dhamtari, he received complaint regarding irregularity and illegality committed in appointment of number of employees and when petitioner initiated enquiry, as a counter action, those employees made false and fabricated complaint against the petitioner. It has also been stated in the petition that the petitioner had strained relation with the Collector, Dhamtari as the petitioner had been dealing with a high profile trial in which he has passed an order of payment of compensation, a motivated and fabricated complaint was also launched against him in the year 2013 which also led to initiation of enquiry.
3. Learned counsel for the petitioner argued in extenso to convince this Court that the departmental enquiry against the petitioner is an act of victimization and harassment because number of judicial officers have teamed up against the petitioner on account of aforesaid incident.
4. Learned counsel for the petitioner further submits that looking to the nature of allegation against the petitioner, as contained in charge sheet, it was wholly unwarranted to issue charge sheet towards imposition of major penalty. According to learned counsel for the petitioner, all the allegations contained in the charge sheet are afterthought, motivated and only an attempt by the respondents No. 3 to 6 to somehow implicate the petitioner.
5. Before adverting to submission made in the factual backdrop of the case, as unfolded from the records, it would be profitable to examine and survey

legal position adumbrated in plethora of decisions of the Apex Court in the matter of scope of judicial review at the threshold of a departmental enquiry.

6. 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 & Sons*⁵. 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

¹ (1994) 3 SCC 357

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 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

² (1995) 1 SCC 332

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.”.....

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

3 (1996) 11 SCC 498

4 (2010) 13 SCC 311

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 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."

7. In the light of aforesaid principles, if the facts of the present case and the charge sheet is looked into, it is found that the departmental enquiry has been initiated against the petitioner on following allegation :

"During the period of posting of Mr. M.D. Katulkar as

Judge, Family Court, Dhamtari, in the matter of complaint made by Shri Roshan Tandon of Dhamtari against Smt. Minakshi Gondale, the then President, Selection Committee/Judge, Family Court, Dhamtari with regard to appointment of Class-IV employees of Family Court, Dhamtari, he submitted an enquiry report dated 10.8.2016 against his predecessor judicial officer, thereby, assuming the role of the Hon'ble High Court without obtaining the permission of the Hon'ble High Court. His above conduct is highly unbecoming of a judicial officer and amounts to misconduct provided under Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 and punishable under Rule 10 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966."

8. The charge sheet has been issued against the petitioner only after seeking explanation of the petitioner. The decision to initiate departmental enquiry has not been taken by the respondents No. 3 to 6 but by the High Court itself. Therefore, the petitioner's allegation that the departmental enquiry is an outcome of malicious action of respondents No. 3 to 6 is baseless, unfounded and liable to be rejected.
9. In the opinion of this Court, no case is made out at this stage to interfere with the departmental enquiry. The petition being *sans substratum* deserves to be and is accordingly dismissed in limine.

Sd/-

(Manindra Mohan Shrivastava)
Judge