

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.6502 of 2010

Dated : 09.03.2017

Between:

A.K.Bharathi, W/o K.Nehru

..

Petitioner

And

Andhra Pradesh State Road Transport Corporation
rep. by its Managing Director and another

..

Respondents



THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.6502 of 2010

ORDER :

The petitioner is a conductor. She was involved in cash and ticket irregularities. By order, dated 08.03.2010 she was placed under suspension. On the same day, disciplinary proceedings were initiated against her by serving a charge-sheet on her. In this writ petition, the petitioner challenges the charge-sheet as well as the suspension order.

2. This Court, while admitting this writ petition on 29.03.2010, granted interim suspension insofar as suspension of the petitioner from service is concerned.

3. Learned Standing Counsel for APSRTC, on instructions, submits that though enquiry is completed, in view of pendency of this writ petition, final orders are not passed.

4. Learned counsel for the petitioner submits that the allegation made against the petitioner is frivolous and there is no proof in support of allegation. He further submits that there is no material to prove the misconduct alleged against her and therefore, the disciplinary proceedings are not maintainable.

5. It is not in dispute that charge memo is drawn against the petitioner by the disciplinary authority. The allegations made are based on consideration of material on record. Whether the allegations are tenable or whether the petitioner has sufficient justification in support of her stand that there was no irregularity or misappropriation by her are all matters that are required to be

gone into in the disciplinary enquiry. In matters regarding the challenge to charge-sheet, the Court has limited jurisdiction. The Court can interfere only when the charges are leveled in *mala fides* exercise of power or the authority concerned is incompetent to take disciplinary action. At the initial stage, the Court cannot go into the merits of the allegations and the evidence on record to hold that the charges are not maintainable.

6.1 On the scope of judicial review on a challenge to initiation of disciplinary proceedings, the law is well settled.

6.2.1 In UNION OF INDIA Vs KUNISETTY SATYANARAYANA¹ the employee challenged the charge memo dated 23.12.2003. In the said charge memo, it was alleged that the employee claimed reservation against ST roster point in the promotional post, though he did not belong to said category. Instead of replying to the aforesaid charge, the employee filed O.A., before the Central Administrative Tribunal. The Tribunal disposed of O.A. directing the employee to submit his reply to the charge memo. Instead of filing reply, he filed writ petition before the High Court and High Court allowed the writ petition. The Union of India preferred appeal before the Supreme Court.

6.2.2 On review of the precedent decisions, Supreme Court held as under:

“13. It is well settled by a series of decisions of this Court that ***ordinarily no writ lies against a charge-sheet or show-cause notice*** vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC

¹ (2006) 12 SCC 28

327 : JT (1995) 8 SC 331] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , *Ulagappa v. Divisional Commr., Mysore* [(2001) 10 SCC 639] , *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that ***at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.*** It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. ***It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.***

15. Writ jurisdiction is discretionary jurisdiction and hence such ***discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.***

16. No doubt, in some ***very rare and exceptional cases*** the High Court can quash a charge-sheet or show-cause notice if it is ***found to be wholly without jurisdiction or for some other reason if it is wholly illegal.*** However, ordinarily the High Court should not interfere in such a matter.”

(emphasis supplied)

6.3.1 In **SECRETARY, MINISTRY OF DEFENCE AND**

OTHERS Vs PRABHASH CHANDRA MIRDHA² the employee was served with charge memo alleging that he demanded bribe and accepted. Challenging the said charge memo, employee filed O.A.

² (2012) 11 SCC 565

before the Central Administrative Tribunal, alleging that the charge memo was issued by subordinate to the appointing authority; the O.A was allowed by the Tribunal on the ground that the charge memo was issued by authority subordinate to the appointing authority. Writ Petition preferred on behalf of Union of India was dismissed. On behalf of Union of India, appeal was preferred before the Supreme Court.

6.3.2. Supreme Court held as under:

“10. Ordinarily a writ application does not lie against a charge-sheet 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, charge-sheet 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 charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327] , *Ulagappa v. Commr.* [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In *State of Orissa v. Sangram Keshari Misra* [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that ***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 for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.*** (See also *Union of India v. Upendra Singh* [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet 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 charge-sheet 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.***

6.4.1. In **CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA AND OTHERS Vs M.MASILAMANI**³, it was alleged that there were certain irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non disclosure of the facts, charge sheet was drawn on 6.1.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal as well as memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of

³ (2013) 6 SCC 530

judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, appeal was preferred before the Supreme Court.

6.4.2. Dealing with various contentions, the Supreme Court observed as under:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as **such a power is de hors the limits of judicial review**. In the event that the court/tribunal exercises such power, **it exceeds its power of judicial review at the very threshold**. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)”

7. The principles deducible from the above decisions are:

- (i) Ordinarily writ does not lie against show cause notice/charge memo;

- (ii) entertaining writ petition against show cause notice/ charge memo is dehorse the limit of judicial review/ exceeds the power of judicial review at the threshold;
- (iii) issuance of show cause notice/charge memo, does not adversely affect/infringe the rights of the employee; does not amount to an adverse order;
- (iv) 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 as determination of correctness or truth of the charge is the function of the disciplinary authority. It would be premature to deal with the issues;
- (v) in only very rare and exceptional cases, if it is found to be wholly without jurisdiction or for some other reason, if it is wholly illegal, Court can exercise power of judicial review at the stage of show cause notice/ charge memo;
- (vi) discretion under Article 226 should not ordinarily be exercised to quash charge sheet/ show cause notice

This Case does not fell into exceptional category warranting interference by this Court against the impugned charge-sheet.

8. Since the petitioner is already re-instated into service, no further orders are required with reference to order of suspension. However, the interregnum period from the date of suspension till the date of re-instatement, in pursuance of the interim order, requires regularization. Such period can be regularized only after completion of disciplinary proceedings.

9. Having regard to the peculiar facts of this case and as the disciplinary proceedings are pending since 2010, this Court is of the opinion that the interest of justice would be met, if the respondents are directed to conclude the disciplinary proceedings, as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this order.

10. In the circumstances, the writ petition is disposed of with the following directions:

- 1) The respondents are directed to finalise the disciplinary proceedings, as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this order.
- 2) The period of suspension i.e., from the date of suspension till the date of re-instatement, in pursuance of the interim order, shall be regulated after conclusion of the disciplinary proceedings.
- 3) It is needless to observe that the petitioner shall co-operate for early conclusion of the disciplinary proceedings.
- 4) It is open to the disciplinary authority to resort to suspension of the petitioner, in case, she does not co-operate for early conclusion of the disciplinary proceedings. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date : 09.03.2017
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