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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: September 05, 2017

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W.P.(C) 7799/2017, CM Nos. 32194-32195/2017

ANIL KUMAR ANAND

..... Petitioner

Through: In person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Jitesh Vikram Srivastava, Adv.
for R1.
Mr. Sanjeev Kumar, Mr. H.K. Naik,
Mr. Rajnish, Mr. P.S. Neriwal,
Mr. Ajay Amritraj and
Mr. Sudhanshu Palo, Advs. for R2,
R3 and R5.

CORAM:-

HON'BLE MR JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the aforesaid facts, submissions and circumstances of the case, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to:

a. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the entire charge sheet no. UT/O-DHRD-3414/IR-5(4)/2016-17 dated June 27, 2016, as non est in the eye of law;

b. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the entire disciplinary enquiry proceedings, which have been instituted against the petitioner, in terms of

the charge sheet no. UT/O-DHRD-3414/IR-5(4)/2016-17 dated June 27, 2016, as null and void ab initio;

c. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the appointment of Mr. Siddhartha Dash as the Enquiry Officer;

d. issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the report of the enquiry officer dated August 18, 2016, submitted in the matter of the enquiry held in pursuance to the Non-Est charge sheet No. UT/O-DHRD-3414/IR-5(4)/2016-17 dated June 27, 2016, as null and void;

e. award cost and incidentals in favour of the Petitioner and against the respondents;

f. pass any other appropriate order(s) and direction (s) as may be deemed fit and proper in the facts and circumstances of this case.”

2. The facts as noted from the petition are, a charge sheet was issued to the petitioner on June 27, 2016. After conducting the proceedings, the Enquiry Officer has submitted his report on August 18, 2016, which has been given to the petitioner to enable him to submit his representation/response. It is conceded by the petitioner that he has not submitted his representation/response till date. It appears that the last date for submitting the same has been extended till September 08, 2017. The petitioner has challenged the charge sheet as well as the Enquiry Officer's report on the following grounds; (i) the same has been issued by an incompetent authority; (ii) the charge sheet has not been issued in writing as contemplated under Rule 55(3) of Rules of 2003; (iii) the Enquiry Officer appointed to inquire into the charges is an Officer junior to the

petitioner in rank; (iv) no reply to the charge sheet has been sought for. That apart, the charge sheet also names the Enquiry Officer, which reflects a predetermined mind of the respondents; (v) the proceedings held on July 5, 2016, July 12, 2016 and also August 04, 2016 have been conducted without issuing a show cause notice to the petitioner and (vi) the respondents have not supplied the documents sought for by the petitioner in his defence.

3. In support of his aforesaid grounds, the petitioner states, in terms of the UTI Asset Management Company (Staff) Rules, 2003 (for short Rules of 2003), it is the CMD, who is competent to issue a charge sheet. In this regard, he has placed before me, copy of the Rules of 2003. His alternative submission is that, even assuming the Rules of 2003 have been amended in the year 2010, the amendment is in respect of Rule 55 of the Rules of 2003 but there is no corresponding amendment to Rule 3(h), which defines '*Competent Authority*'. He has placed before me, the Office Order dated May 22, 2003 in that regard. He states, that the authenticated copy of the amended Rules be directed to be given to him.

4. Insofar as his plea that the Enquiry Officer is an Officer below his rank is concerned, it is his case that the Enquiry Officer is working in Grade 'C' whereas the petitioner is working in Grade 'D' and he being senior to the Enquiry Officer, the Enquiry Officer is not competent. In this regard, he has drawn my attention to Rule 55(4) of the Rules of 2003.

5. Insofar as his submission that the charge sheet should be in writing, Mr. Anand has drawn my attention to Rule 55(3)(i). Insofar as his plea that the Enquiry Officer has been named in the charge sheet, which presupposes a predetermined mind is concerned, he refers to the charge sheet dated June 27, 2016. He would rely upon the following judgments in support of his submissions:-

(i) (2014) 1 SCC 351 Union of India and Ors v. B.V. Gopinath, Civil Appeal No. 7761/2013 and connected Civil Appeals;

(ii) AIR 1972 SC 2452 The Management of D.T.U v. Shri B.B.L. Hajelay and another.

6. On the other hand, learned counsel for the respondent No.4 would oppose the petition. Insofar as plea of the petitioner that the Head (HR) is not the Competent Authority, he states, that the Rules of 2003 were amended in the year 2010 and the Rule 55 stipulates that in the case of direct reportees and skip level to CMD, the penalties insofar as at (b), (c), (d) or (e) of sub Rule (1) shall be imposed by CMD and in case of other Officers like the petitioner, it is the Head (HR). He has placed before me, copy of the Rules as amended till May 30, 2017 for consideration. He has also placed before me the relevant order dated May 14, 2010 vide which the amendments in various Rules, of the Rules of 2003 were carried out. That apart, he draws my attention to some of the representations made by the petitioner himself, wherein, according to him the petitioner has himself accepted that Mr. Kamlesh Dangi, Head (HR) was Competent Authority. In this regard he refers to page 184 of the paper book. The learned counsel for the respondent No.4 has also drawn my attention to page 153 of the paper book to submit

that his position was conveyed to the petitioner on September 23, 2016. He has not challenged the same at any point of time till the filing of the present petition.

7. Insofar as the plea of the petitioner that Mr. Siddhartha Dash is an Officer junior to the petitioner and could not have been the Enquiry Officer is concerned, the learned counsel for the respondent No.4 would draw my attention to page 172 of the paper book wherein it has been conveyed to the petitioner that Mr. Siddhartha Dash is an Officer in Band 9 whereas the petitioner is an officer in Band 5 and as such being a senior, was competent to be an Enquiry Officer, to enquire into the charge sheet issued to the petitioner on June 27, 2016.

8. Insofar as the plea of the petitioner that the charge sheet issued to him was not in writing in accordance with Rule 55 (4) of the Rules of 2003 is concerned, learned counsel for the respondent No.4 has drawn my attention to page 182 of the paper book to contend that an e-mail dated August 03, 2016 was sent to the petitioner wherein it was clearly mentioned that original charge sheet dated June 27, 2016 was sent by the speed post which was returned undelivered by the Postal Authorities with the remarks "Door Closed" on July 02, 2016, July 04, 2016, July 05, 2016 and July 06, 2016. It is also stated in the said mail that in any case he has received the signed PDF copy of the said charge sheet sent by Mr. Kamlesh Dangi on June 27, 2016. The said mail also refers to the fact that speaking order has already been passed on the petitioner's allegations vide various mails of Mr. Kamlesh Dangi on June 28, 2016, July 07, 2016, July 11, 2016 and July 21, 2016. He states that the said communication sent on August 03, 2016 has never been challenged by the petitioner till the filing of this petition.

9. Insofar as the plea of the petitioner that the respondents have not given the documents sought for by the petitioner in his defence or appointment of Mr. Siddhartha Dash as Enquiry Officer in the charge sheet itself or non issuance of notice for the hearing on July 05, 2016, July 12, 2016 or for that matter August 04, 2016 are concerned, he states that the petitioner shall be within his right to take all such pleas in his representation, to the Enquiry report which shall be considered by the Competent Authority. In the last, it is his submission, the attempt of the petitioner in filing the petition is only to interdict the proceedings, which culminates with the passing of the final order.

10. Having considered the submissions made by the petitioner and learned counsel for the respondent No.4, I agree with the submission made by learned counsel for the respondent No.4 on September 04, 2017 that the petitioner had not filed the Rules as amended in 2010 even though he filed the same in W.P.(C) No. 5283/2016. When the matter was listed on September 04, 2017, I had directed the Registry to send the record of W.P.(C) No. 5283/2016 today. I have seen the W.P.(C) No. 5283/2016. I find, the copy of the Rules incorporating the amendment of 2010 have been annexed to the writ petition. The plea of the petitioner that in the absence of an authenticated copy of the said Rules by the respondents, he never wanted to commit a mistake by filing the Rules, which may be incorrect, is not appealing for the simple reason, when he could file the Rules in W.P.(C) No. 5283/2016, he could have filed the same in this writ petition. He could have taken a stand in the writ petition about the non-application of the said Rules, but non filing of the Rules does create a doubt in the mind of the Court that the same

have been intentionally not filed. The said Rules become relevant, as the petitioner has challenged the competency of the Head (HR) in issuing the charge sheet.

11. That apart, on perusal of the Rules as placed before me by the learned counsel for the respondent No.4, it is seen that Rule 55 of the Rules have been amended in the following manner:-

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55(3) No employee shall be subjected to the penalties (b), (c), (d) or (e) of sub rule (1) or to the penalty (ii) of sub rule (2) except by an order in writing signed by the

(i) CMD: In case of direct reportees & skip level to CMD.

(ii) Head of HR : In case of other officers.

(iii) Skip Level (in HR) to CMD : In case of workmen employees

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12. The plea of the petitioner that in the absence of any corresponding amendment to the definition of Competent Authority under Section 3(h) would mean that the pre-amended Rules, (a copy of which is placed by the petitioner), which stipulates as under, shall hold the field, is without any merit.

“Rule No. 3(h) – Definition

“Competent Authority” means the:

(i) Chairman & Managing Director : In the case of officers in Grade ‘D’ and above.

(ii) Vice President (HRD) : In the case of Officers in Grades 'A' to 'C' and other employees.”

13. On a perusal of Rule 55, the substantive provision which depicts the Authority to impose penalty only stipulates the Authority by designation. The Rule nowhere refers to the word “Competent Authority”. In any case, the non amendment of Rule 3(h) would have no bearing on the applicability of Rule 55 as the said Rule, which is a complete Rule in itself empowering the authorities named therein to impose certain penalties. Even otherwise, the learned counsel for the respondent No.4 is right in his submission that, the amendment to Rule 55(3) necessarily result in the amendment to Rule 3(h). This plea of the petitioner is liable to be rejected.

14. Insofar as the submission that the Enquiry Officer is junior to him is concerned, the communication at page 172 is very clear from where, it can be seen that the Enquiry Officer Mr. Siddhartha Dash is a Band 9 Officer whereas, the petitioner is a Band 5 Officer. The plea of the petitioner that he cannot be in Band 5 officer cannot be an issue in this writ petition.

15. Insofar as the other pleas are concerned, the same relate to the conduct of the Enquiry Proceedings. The law is well settled, the proceedings cannot be interdicted till such time a final order is passed unless it is a case of malafide, which is not the case herein. In this regard, I would like to refer to the judgment of the Supreme Court in the case reported as **(2012) 11 SCC 565 Secretary, Ministry of Defence and others v. Prabhask Chandra Mirdha**, wherein the Supreme Court in paras 10, 11 and 12 held as under:-

“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.”

Even otherwise, I find that the petitioner has not even replied to the Enquiry Report submitted to him. The petitioner would be within his right to take all such pleas in his representation to the Disciplinary Authority. It is expected that the Disciplinary Authority shall apply his mind on the pleas to be taken by the petitioner in his representation.

16. That apart, I find, the objections as and when raised by the petitioner were replied to, as far back as in the month of August, 2016 and September, 2016. No steps have been taken by the petitioner to challenge the same till the filing of the petition on August 30, 2017. I say nothing further.

17. Insofar as the judgments referred to by the petitioner are concerned, in ***Union of India and Ors v. B.V. Gopinath (supra)***, wherein the petitioner relied upon para 55 of the judgment is concerned, the issue which was decided by the Supreme Court was that even a charge sheet need to be approved by the Disciplinary Authority in view of Rule 14(3) of the CCS (CCA) Rules. The said judgment has no applicability.

18. Insofar as the judgment of the Supreme Court in the case of ***The Management of D.T.U v. Shri B.B.L. Hajelay and another (supra)*** is concerned, the same has no applicability in the facts of this case, moreso in view of my conclusion above.

19. I do not see any reason to entertain the present petition. The petition is dismissed.

Dasti.

CM No. 32194/2017 (for stay) and CM No. 32195/2017 (for direction)

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 05, 2017/ak

