

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33328 of 2017
and
W.M.P.No.36771 of 2017

P.Karuppuswamy

..Petitioner

vs

1.The Senior Divisional Security Commissioner/
Disciplinary Authority,
Railway Protection Force,
Chennai.

2.The Assistant Security Commissioner,
Integral Coach Factory,
Chennai - 38.

3.The Inspector General cum
Chief Security Commissioner,
ICF, Chennai - 38.

4.Mr.S.K.Parhi,
Inspector General cum Chief Security Commissioner,
Integral Coach Factory,
Chennai - 38.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned order issued by the 1st respondent in No.M/XP/227/11/2017 dated 11/12/2017 and quash the same and grant such other further relief as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Dhinesh kumar

For Respondents : Mr.P.T.Ramkumar

O R D E R

The charge sheet dated 11.12.2017 issued by the 1st respondent is under challenge in this writ petition.

2.The writ petitioner entered into the services of the Railway Protection force in the cadre of Sub Inspector on 10.05.1992 and thereafter, promoted to the Post of Inspector in the year 2004. On account of certain allegations, a charge sheet has been framed against the writ petitioner in proceedings dated 11.12.2017. The allegations set out in the impugned charge sheet is extracted hereunder:

Charge:

"That the said P.Karuppuswamy, IPF/NHC while working as IPF/TTC/ICF/PER has registered a case in RP (UP) crime No.01/2016 U/S 3(a) of RP(UP) Act (Amended 2012) based on the missing report, No.No.93/Complaints/2016 dated 28.11.2016 received from Sri.B.Udhayakumar, SSE/CBT Lab/TTC/ICF/PER on 28.11.2016 regarding missing of computer accessories valued Rs.47,590/- (Approx) from CBT/LAB/TTC/ICF on 28.11.2016. He who was the Enquiry Officer in the case, during the enquiry had committed the following misconduct:

1. The enquiry of the case was not properly documented and submitted by him.
2. He failed to pinpoint modus operandi, failed to arrest the culprits if any had connived.
3. He failed to bring any evidence about the culprits who committed the theft from CBT/Lab/TTC/ICF other than the statement of the receiver.
4. He failed to fix responsibility on any staff for the theft reported.
5. He failed to ensure the improvement on basic security measures at TTC/ICF/PER and to submit action taken report.

Thus, he has contravened Rule 146.2(i) & 147(ii) of RPF Rules, 1987."

3.The charge is followed by the statement of allegations on the basis of which, charge is framed against the writ petitioner. The documents relied upon by the disciplinary authority has also been stated. This apart, the list of witnesses to be examined are also cited in the impugned charge sheet. Thus, there is no infirmity in respect of the charge sheet issued against the writ petitioner.

4.The learned counsel for the writ petitioner mainly contended that the impugned charge memo states that the enquiry was fixed at 10.00 hours on 21.12.2017 at ASC/W&S/PER Chamber and the writ petitioner is directed to attend the enquiry, failing which, the enquiry will be conducted ex-parte. The petitioner has stated that even before receiving explanations/

objections from the writ petitioner, if the disciplinary authority came to a conclusion that an enquiry is to be conducted, then the same amounts to violations of principles of natural justice. There is a possibility of dropping the charges in the event of accepting the explanations / objections to be submitted pursuant to the charges framed against the writ petitioner. Thus, the opportunity of considering the explanations / objections to be submitted by the writ petitioner is taken away. On this ground, the charge sheet is liable to be scrapped.

5.The learned counsel appearing on behalf of the respondents, in this regard, cited Rule 153.5 of the Railway Protection Force Rules, 1987, which reads as under:

"153.5: The disciplinary authority shall deliver or cause to be delivered to the delinquent member, at least seventy-two hours before the commencement of the inquiry, a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and fix a date when the inquiry is to commence; subsequent dates being fixed by the Inquiry Officer."

6.Citing the above said Rule, the learned counsel for the respondents states that as per the Rule, the first date of enquiry is to be fixed by the authorities, who issued the charge sheet and all other subsequent dates must be decided by the Enquiry Officer so appointed. Thus, the same will not take away the opportunity to be provided to the delinquent officers in accordance with the rules in force.

7.This Court is of an opinion that undoubtedly, on issuance of charge sheet, the delinquent officers must be given an opportunity to submit explanations / objections in respect of the allegations set out in the charge sheet. However, mere citing of the date and the Enquiry Officer will not preclude the disciplinary authority to take a decision and drop the charges. Even in case, if the Enquiry Officer and the date of enquiry is mentioned in the charge memo and if the disciplinary authority came to a conclusion that the charges are liable to be dropped by accepting the explanations / objections given by the writ petitioner, then they can pass suitable orders, dropping all the charges and no further proceedings need not be continued. However, mere stating the date of enquiry is not a ground to quash the entire allegations and the imputations of misconducts framed against the writ petitioner. On such hyper technical grounds, if the Police officer is allowed to escape from the clutches of disciplinary proceedings, then the same will defeat the very purpose and the object of the rules and disciplinary

proceedings. Such a proposition can never be accepted for the purpose of quashing the entire charge sheet.

8. Even assuming that the point raised on behalf of the writ petitioner will deprive the writ petitioner to get his opportunity, this Court is of an opinion that the disciplinary authority has to provide an opportunity before sending the matter for conducting an enquiry by the Enquiry Officer. Thus, the authority competent, who issued the charge memo, before conducting an enquiry by the Enquiry Officer, has to consider the explanations / objections submitted by the writ petitioner.

9. Thus, this Court is of an opinion that such a procedure is to be adopted even with reference to the rules cited by the learned counsel for the respondent, more specifically, Rule 153.5 of the Railway Protection Force Rules, 1987. In the event of any contrary interpretation, the arguments as advanced by the writ petitioner has got merit consideration.

10. Accordingly, the authorities competent, who issued the charge memo, on receipt of the explanations / objections from the writ petitioner, shall consider the explanations / objections independently and take a decision, whether to continue the disciplinary proceedings through the Enquiry Officer or to drop the same by accepting the explanations / objections to be submitted by the writ petitioner and thereafter, if a conclusion is arrived to continue the enquiry proceedings, then the matter may be placed before the Enquiry Officer to conduct an enquiry by producing documents and by adducing evidences. If the said procedure is followed, then there is no necessity to consider the grounds raised on behalf of the writ petitioner with regard to the compliance of the principles of natural justice. Thus, the respondents are bound to follow the said procedure for the purpose of the continuance of the enquiry proceedings by the Enquiry Officer.

11. In respect of the quashing of the charge memo, the same cannot be entertained in view of the fact that the delinquent official has to establish his innocence or otherwise by participating in the enquiry proceedings and submit his documents and by adducing evidences.

12. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is

raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

13. Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

14. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"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. 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."

15. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

16. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

17. In view of the said legal principles, the grounds raised for quashing of the charge memo cannot be entertained. Accordingly, the following orders are passed:

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The writ petitioner is directed to submit his explanations /objections on the charge sheet dated 11.12.2017 within a period of four weeks from the date of receipt of a copy of this order.

(3) On receipt of the explanations / objections from the writ petitioner, the respondents are directed to consider the explanations / objections and take a decision in respect of the further continuance of the enquiry proceedings to be conducted by the Enquiry Officer or not.

(4) In the event of taking a decision to continue

the enquiry, the same shall be placed before the Enquiry Officer for conducting an enquiry into the charges.

(5) The writ petitioner is directed to co-operate for the conclusion of the disciplinary proceedings in all respects. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded in the enquiry proceedings.

18. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Senior Divisional Security Commissioner/
Disciplinary Authority,
Railway Protection Force,
Chennai.

2. The Assistant Security Commissioner,
Integral Coach Factory,
Chennai - 38.

3. The Inspector General cum
Chief Security Commissioner,
ICF, Chennai - 38.

+1cc to Mr. R. Dhineshkumar, Advocate SR.No.70365

+1cc to Mr. P. T. Ramkumar, Advocate SR.No.70048

W.P.No.33328 of 2017

BR (CO)

GMV (02/11/2018)