

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5811-2018 (O&M)
Date of Decision:-09.03.2018.

Punsup Mulajam Union Registered Punjab Registration No.27 of 1985

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Vineet Jakhar, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has challenged the charge-sheet dated 27.04.2017 (Annexure P-28). Filing of a charge-sheet is only a commencement of departmental inquiry. Petitioner has to make necessary reply to the charge-sheet. Therefore, the present writ petition is pre-mature. That apart Supreme Court time and again held that Courts cannot interfere in respect of charge-sheet. Charge-sheet can be interfered only if there is an order is ultra vires/ incompetency/lack of jurisdiction by the authority and further if there is any *mala fide* urged against an official who has issued charge-sheet. Therefore, petitioner has not made out a case so as to interfere with Annexure P-28 i.e. show cause notice relating to framing of charge against him for alleged to have committed certain misdeeds while discharging the duties of the post held him for which he has submitted his reply and to request for dropping charge-sheet. Disciplinary authority has

to consider reply to charge-sheet, if he is not satisfied with reply, he would proceed with inquiry, if he is satisfied he would drop charge-sheet. Where statute creates a right of liability and also stipulates the remedy of filing reply/explanation to charge-sheet/memo procedure for the enforcement of that right or liability, resort must be had to the said statutory remedy before invoking extraordinary and prerogative writ jurisdiction of a High Court under Article 226 of Constitution.

(2.) Learned counsel for the petitioner relied on a decision of this Court passed in CWP-11041-2001 disposed of on 20.01.2015. It was upheld by the LPA Bench as well as Supreme Court. Perusal of the order dated 20.01.2015 passed in CWP-11041-2001, it is evident that matter is not relating to challenge to the charge-sheet in a disciplinary proceedings. It relates to some demand notice and not initiation of disciplinary proceedings. Supreme Court in the case of Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha (2012) 11 SCC 565 held that under what circumstances, in respect of charge-sheet Court can interfere. Para 10 to 12 read 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 to determine 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.”

In view of the aforesaid decision, petitioner has not made out a case.

(3.) Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

March 09, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.