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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decided on: 05.01.2018**

+ LPA 3/2018, CM APPL. 256/2018 (stay) and CM APPL. 257/2018 (exemption)

ANIL KUMAR ANAND Appellant

Through: Appellant in person.

versus

UNION OF INDIA & ORS Respondents

Through: Mr Virender Pratap Singh Charak and
Ms Shubhra Parashar and
Mr Pushpender Singh, Advs. No.1

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

1. The present Letters Patent Appeal, under Clause 10 of the Letters Patent, assails an order dated 20.11.2017, passed by the learned Single Judge in Writ Petition (C) No.10232/2017, whereby the same came to be dismissed, whilst granting the appellant four weeks' time to make a representation against a show-cause notice dated 30.10.2017, proposing a penalty in terms of Rule 55 (3) of the Unit Trust of India Assets Management Company (Staff Rules), 2003, in relation to the Chargesheet No.UT/O-DHRD-3414/IR-5(4)/2016-17 dated 27.06.2016.

2. At this juncture, it would be relevant to observe that this is the second round of proceedings filed on behalf of the appellant,

impugning the disciplinary proceedings initiated by the UTI Asset Management Company Limited/Respondent No.4 against him.

3. In the earlier round of litigation, the appellant had challenged the report of the Enquiry Officer indicting him, on the assertion that, the chargesheet had not been issued by the Competent Authority and the Enquiry Officer was incompetent to conduct the same. By way of order dated 05.09.2017, the appellant's challenge in this behalf was repelled by the learned Single Judge of this Court in W.P.(C) No.7799/2017, titled as '*Anil Kumar Anand vs. Union of India*'. Aggrieved by said order dated 05.09.2017, the appellant carried the same in LPA No.702/2017. This Court by way of its order dated 01.11.2017, permitted the appellant to withdraw the same. It was, however, directed that the Disciplinary Authority would consider the representation of the appellant and pass a speaking order thereon, in accordance with law and Rules. It would also be pertinent to point out that the appellant filed a review petition being Review Petition No.404/2017, seeking review of the order dated 05.09.2017, which was also negated by this Court vide order dated 26.09.2017.

4. In the present appeal, it is observed that the appellant seeks to re-agitate all the issues that he had raised in the earlier round of litigation and it appears to us that, it is an attempt to delay the conclusion of the disciplinary proceedings pending against him, by obtaining an order from this Court. We must also point out, at this stage, that on his own admission, the appellant has instituted other proceedings before this Court in relation to his employment with the

said respondent No.4; five of which, including two writ petitions and three appeals have already been finally decided by this Court.

5. The present proceedings essentially seek to assail a notice to show-cause dated 30.10.2017, asking the appellant to submit his representation in writing against the penalty proposed to be imposed on him in relation to Chargesheet No.UT/O-DHRD-3414/IR-5(4)/2016-17 dated 27.06.2016.

6. The appellant, who appears in person, has been heard at length for more than an hour. He has invited our attention to the following decisions:-

- i. *Mathura Prasad vs. Union of India and Ors. (2007) 1 SCC 437;*
- ii. *Union of India (UOI) vs. B.V. Gopinath; (2014) 1 SCC 351;*
- iii. *The Management of D.T.U. vs. Shri B.B. L. Hajelay and Anr. AIR 1972 Supreme Court 2452*

7. A perusal of the impugned order dated 20.11.2017 would reflect that the appellant had been granted four weeks' time to make a representation against the proposed penalty and the respondent was directed to decide his representation, within eight weeks thereafter, if filed, by passing a speaking order, uninfluenced by the orders of the Court and in accordance with the applicable rules and regulations. It was also observed that the appellant would be at liberty to avail his remedies, subsequent upon the determination of his representation by the said respondent, in accordance with law. Subsequent to the passing of the impugned order, the appellant filed an application being CM No.44068/2017 seeking modification thereof. The learned Single

Judge, upon hearing the appellant, found no ground to modify the impugned order dated 20.11.2017, except to the extent that the time granted to the appellant to make a representation was extended to eight weeks from the date of the said order instead of four weeks' time originally granted.

8. The appellant, while arguing his appeal on merits, prays for a further extension of 12 weeks to file a representation, in accordance with the Rules before the Competent Authority, in response to the proposed penalty.

9. Before us, the appellant has re-agitated the issue that, the chargesheet dated 27.06.2016 is *non est* in the eye of law since the same was not issued by the competent person, and has once again sought the quashing of the entire disciplinary enquiry proceedings on these grounds, in addition to challenging the issuance of the show-cause notice dated 30.10.2017 proposing a penalty. As noted earlier, the appellant had filed W.P.(C) No. 7799/2017, wherein he had made the following prayers:-

“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/ODHRD-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.”

10. In the said writ petition, the learned Single Judge, after hearing arguments, gave its findings, whereby, after determining as to who is the Competent Authority *qua* the appellant, it was held as under:-

“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.”

11. The other pleas of the appellant challenging the authority of the Enquiry Officer were also rejected. The relevant paragraph is extracted as under:-

“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.”

12. This order was carried in appeal being LPA No.702/2017 and the same came to be dismissed as withdrawn by this Court vide order dated 01.11.2017. The finding of the learned Single Judge on the issue, therefore, has attained finality.

13. The appellant, however, once again re-agitated the very same issue in the instant writ petition, which has culminated in the impugned order. The learned Single Judge in the impugned order has also noted in para 7 that this issue had attained finality. The relevant portion of the said paragraph of the order dated 20.11.2017 is extracted as under:-

“7. After having considered the submissions advanced by both the sides and on perusal of impugned order, material on record and the decisions cited, I find that petitioner’s plea of charge-sheet not being issued by a competent authority and of Inquiry Officer being incompetent to hold the inquiry, already stands negated in the first round of litigation. It is so evident from the Writ Court’s order of 5th September, 2017 (Annexure P-2), which has attained finality. The question which falls for consideration is whether petitioner’s Representation

has been adequately dealt with in impugned order or not.”

14. The appellant has relied on *B.V. Gopinath (supra)* to urge that he can challenge the enquiry proceedings even before its culmination and that there is no bar to it.

15. We have given our thoughtful consideration to this aspect. The findings in the case cited have no application in the facts of this case; firstly for the reason that the issue that the chargesheet was not issued by the Competent Authority and the Enquiry Officer was not competent to hold the enquiry, has already been dealt with by the competent courts in the earlier proceedings which findings have now attained finality and cannot be re-agitated afresh and secondly, the basis of the findings of the Supreme Court in *B.V. Gopinath (supra)* is the fact that the chargesheet in the case was not approved by the Disciplinary Authority in terms of Rule 14(3) of CCS (CCA) Rules. The said judgment, therefore, has no applicability on the facts of this case.

16. The Courts have frowned upon the litigants who instead of participating in the disciplinary proceedings against them keep challenging it at every stage before the Courts. The Apex Court in its numerous pronouncements has held that where the disciplinary enquiry is pending, unless it is concluded, any challenge to it is premature and not maintainable.

17. In *Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha: (2012) 11 SCC 565*, the Supreme Court has 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.”

18. The learned Single Judge in the earlier round of litigation, vide order dated 05.09.2017 in W.P.(C) No. 7799/2017, which finding has now attained finality, has clearly observed that *‘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’*

19. The plea of the appellant that the enquiry is *mala fide* has already been rejected in the earlier proceedings. Even otherwise before us as well, the petitioner has not been able to show that the issuance of impugned show-cause notice dated 30.10.2017 is a *mala fide* act on the part of the respondent. The show-cause notice which has been issued to give the appellant an opportunity to submit his explanation on the proposed punishment, cannot be termed a *mala fide* act on the part of the respondent.

20. The appellant has also relied upon the findings in the case of *Mathura Prasad (supra)* and *The Management of D.T.U. (supra)* in support of his contentions. However, the findings in these cases are of no help to him because the Supreme Court in these cases was judicially reviewing an order of dismissal imposed by the Competent Authority and not issuance of a show-cause notice.

21. The conduct of the appellant in rushing to Court without filing a representation to the proposed penalty, as required by law, to the show-cause notice dated 30.10.2017, is indicative of his attempts to stall the culmination of the disciplinary proceedings.

22. In view of the foregoing, in our view, the appeal is devoid of any merit and is accordingly dismissed. The pending applications also stand disposed off. However, it is open to the appellant to file a representation, if so advised, against the proposed penalty within the time granted to him by this Court and the respondent is directed to decide the same within eight weeks of receiving it, by passing a speaking order, uninfluenced by the orders of this Court and in accordance with law and the applicable rules and regulations.

**SIDDHARTH MRIDUL, J
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 05, 2018

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