

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5384 of 2014****Reserved on 25/04/2019****Delivered on 15/05/2019**

K.N. Fulzele S/o Late Shri S.L. Fulzele Aged About 57 Years Deputy Director Industries Udyog Bhawan Ring Road No. 1, Telibandha Raipur Tahsil and District Raipur Chhattisgarh

---- Petitioner**Versus**

Under Secretary (Shri P.D. Dohre) Commerce And Industries Department, Govt. Of Chhattisgarh, Mahanadi Bhawan Naya Raipur, Tahsil and District Raipur Chhattisgarh

----Respondents

For Petitioner	:	Mr. V.G. Tamaskar, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER**

1. The challenge in the present writ petition is for quashing of the charge-sheet dated 28.02.2014 and also quashing of the suspension order dated 26.02.2014 (Annexures P/8 & P/4 respectively).
2. The facts of the case is that the petitioner working on the post of Deputy Director (Industries), Government of Chhattisgarh had been placed under suspension vide Annexure P/4 dated 26.02.2014 and later on he was served with a charge-sheet on 28.02.2014. It is these two orders, which are under challenge in the present writ petition.
3. The main grounds of challenge in the present writ petition is that the order of suspension as well as charge-sheet has not been issued after proper approval from the Governor and therefore the same is bad in law. It is further the contention of the petitioner that the charge-sheet has not been issued by the competent authority as the same has been

issued by the Additional Secretary in the Department of Commerce and Industries, whereas it ought to have been issued in the name of the Governor or at least with the approval of the Governor. According to the petitioner the charge-sheet is bad in law for the reason that the same has been issued by an officer subordinate to the Appointing Authority and therefore on this ground also the impugned order is bad in law and not sustainable.

4. The State counsel on the other hand opposing the petition submits that the petition is too premature at this juncture to be entertained. According to the State counsel, it is almost 5 years that the impugned order of suspension and the charge-sheet that was issued and therefore at this juncture, there is no scope of interference left, particularly at this belated stage.
5. According to the State counsel, he has instructions to state that the inquiry has been proceeded for considerably and as such there is no scope of interference left for quashing the charge-sheet at this juncture. It was also the contention of the State counsel that so far as the issuance of a charge-sheet by a subordinate authority other than the Appellate Authority is concerned, the same is also permissible under the service Rules. According to the State counsel merely because the charge-sheet has been issued under the signature of an officer other than the Disciplinary Authority or an officer lower in rank than the Disciplinary Authority, the same would not vitiate the charge-sheet or the inquiry conducted thereon. All that is required is to ensure that the order of punishment, if any, should be issued only by the Disciplinary Authority and not by any other authority unless authorized for the same.

under the service Rules and thus prayed for rejection of the writ petition.

6. Having heard the contentions put forth on either side and on perusal of record what is undisputed is that the order of suspension and the charge-sheet both have been issued more than 5 years back in February, 2014. The writ petition when it was filed in the year 2014 there was no interim order granted to the petitioner and as a consequence, the departmental enquiry initiated was proceeded further.
7. So far as the charge-sheet having being issued by an officer other than the Disciplinary Authority or by an officer lower in the rank of the Disciplinary Authority is concerned, the Hon'ble Supreme Court in the case of **"Inspector General of Police & Anr. v. Thavasiappan"** **1996(2) SCC 145** has held that there is nothing in law, which inhibits the authority subordinate to the Appointing Authority to initiate disciplinary proceedings by issuance of a charge-sheet. It is also not necessary that the charge-sheet should be framed by the authority competent to award punishment.
8. A similar view was earlier also taken by the Hon'ble Supreme Court in the case of **"Steel Authority of India & Anr. v. R.K. Diwakar & Ors."** **AIR 1998 SC 2210**. The aforesaid principle had also been taken by the Hon'ble Supreme Court in the case of **"State of Uttar Pradesh & Anr. v. Chandrapal Singh & Anr."** **AIR 2003 SC 4119**. Again in **1995(1) SCC 332** in the case of **"Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy"** the Hon'ble Supreme Court has in the said case held that **'in so far as initiation of inquiry by an officer subordinate to the Appointing Authority is concerned, it is**

unobjectionable. The initiation can be by the officer subordinate to the Appointing Authority. It is only the punishment order that shall not be by an authority subordinate to the Appointing Authority. As regards the scope of interference in a matter of charge-sheet by the High Court is concerned.”

9. The Supreme Court in the case of **State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179]** dealing with the scope of judicial interference in disciplinary matters was of the opinion that, “the purpose of issuing show cause notice is to afford an opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfere with the show cause notice.
10. Again, the Hon'ble Supreme Court in the case of **Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565]** in paragraph 8, 10 & 12 has held as under:-

8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon.

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, 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.

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.”

11. From the aforesaid legal position as it stands it is clear that, the Supreme Court has been of the view that, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would interfere with the disciplinary proceedings only in the event of there been a total lack of competency in the holding of enquiry proceedings by the enquiry officer or the enquiry proceedings are barred for any reason or where the charges have been already enquired upon and has been concluded.
12. It was next contended by the petitioner that the reply that has been submitted by the respondents should not be accepted rather cannot be accepted for the reason that the affidavit which has been shown by the officer concerned is not proper. According to the counsel for the petitioner, the date on which the affidavit was sworn, the deponent in fact was not available at that place, rather he was at a place in Maharashtra at “Lonawala”, where he had gone for the marriage ceremonies of their son on the date when the affidavit is said to have been sworn at Bilaspur. This ground of the petitioner would not in any manner adversely affect the merits of the case for the simple reasons, those which have been enumerated in the preceding paragraphs and the legal position as it stands. Moreover, the contentions raised by the petitioner also would be hard to accept for the simple reason that merely filing of a marriage card by itself would not establish or prove

that the deponent of the affidavit in support of the reply of the respondents was not present at Bilaspur at the time of the affidavit being sworn.

13. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that, no strong case has been made out by the petitioner calling for an interference with the charge-sheet or the order of suspension issued therein.
14. With the aforesaid observations, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved