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

% *Date of Judgment : 20th November, 2019*

+ **W.P.(C) 12208/2019**

R.S. RANA

..... Petitioner

Through:~ **Mr.Malaya Kumar Chand, Advocate**

versus

**DELHI DEVELOPMENT AUTHORITY THROUGH ITS
CHAIRMAN**

..... Respondent

Through: **Mr.Arun Birbal and Mr.Sanjay Singh,
Advocates**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM.APPL 49898/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is directed against the order dated 31.10.2019 passed by the Central Administrative Tribunal (Tribunal) by which an OA filed by the petitioner stands disposed of. With the consent of the parties, the writ petition is taken-up for final hearing and disposal at the admission stage itself.
4. The petitioner had sought the following reliefs in the OA:

“8. *Relief Sought:*

That in view of the facts and circumstances stated above Applicant prays that this Hon'ble Tribunal may graciously be pleased:

a) Quash and set aside the impugned Memorandum dated 06-06-2013.

OR

b) I) Direct the respondent to dispose of the representation of applicant by dealing with the contention of applicant And further by passing a speaking and reasoned order.

And

II) Direct the respondent to refer the matter for a second opinion from an independent agency, other than C.F.S./CBI"

5. The OA was dismissed by an order dated 31.10.2019; which has led to the filing of the present writ petition.
6. Brief facts to be noticed for the disposal of this petition are that the petitioner was working as a Stenographer with the respondent. The petitioner was promoted to the post of Assistant Director on 20.05.2011. In the year 2005 petitioner had appeared in the Limited Departmental Competitive Examination (LDCE), wherein, however, the petitioner was unsuccessful. In the year 2011, the petitioner made representation to the respondent for re-evaluation of his answer sheets. On the basis of the representation so made and post re-evaluation, the petitioner was promoted to the post of Assistant Director by an order dated 16.03.2012. The department subsequently realised that the English paper of the petitioner was re-evaluated even though there was

no direction for its re-evaluation. It may also be noted that some similarly placed persons had opted for Hindi as a language paper and had filed a writ petition alleging that their papers were checked by a Superintending Engineer who was not qualified to correct papers of Hindi language. During the pendency of the writ petition, the respondent offered to get the papers rechecked, whereupon the papers were sent to a professor of Hindi at Jamia Milia Islamia University. The applicants however opposed this appointment also, on the ground that the professor chosen was over-qualified. Although the OA was dismissed; however the DDA permitted re-evaluation of the Hindi papers. Under the impression that there was a specific order for re-evaluation of English papers as well, the Vice Chairman permitted re-evaluation of the English paper of the petitioner. In the meanwhile, the DDA learnt that the answer sheet of the petitioner had been tampered with since there was over-writing, which led to marks being increased during the re-evaluation. The answer sheet of the petitioner was sent to the CFSL for forensic examination; a report was received, wherein it was confirmed that the answer sheet had been tampered-with. Accordingly, two Articles of Charge were framed against the petitioner, which read as under:

"Article-I

Sh. R.S., Rana, Asstt. Director while working as Assistant Director in PB-1 during 2011-12 has been found responsible for misuse of his office position by getting his answer sheet of English paper of the test for the post of Asstt. Directors held in year 2005 re-evaluated in 2012 without any Court orders by

seeking approval from VC, DDA by misrepresentation of the facts on record.

Article-II

Sh. R.S. Rana, Asstt. Director while working as Assistant Director in PB-I during 2011-12 has also been found responsible for tempering of his answer sheet of English paper before sending the same for reevaluation.

By his above acts, Sh. R.S. Rana, Asstt. Director DDA exhibited lack of absolute devotion to duty, lack of absolute integrity amounting to grave misconduct and acted in a manner unbecoming of a Govt. servant thereby contravened Rule 4(1) (i)(ii) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1990, as made applicable to the employees of the Authority."

7. The Articles of Charge so framed were challenged before the Tribunal by way of an OA, which now stands dismissed.
8. Mr.Arun Birbal, learned counsel for the respondent, who has entered appearance on an advance copy, submits that the writ petition is premature in as much as has happened since the framing of articles of charge; the enquiry has been completed; the enquiry report has been received; and the Disciplinary Authority has issued show cause notice to the petitioner. Counsel further submits that, if at all, the petitioner is finally aggrieved by the order of the Disciplinary Authority or the Appellate Authority, the petitioner would have the remedy to challenge the same.
9. Learned counsel for the petitioner has submitted to the contrary. Learned counsel for the petitioner submits that the charge-sheet itself was bad in law and no charge was made-out. Counsel contends that

since proper equipment was not available in Delhi, the forensic examination was conducted in Chandigarh. Question nos.1 to 30 were examined, whereas the final report refers to Question nos.26A, 26B and 31. He further submits that the allegations against the petitioner are baseless and unfounded; and accordingly, the charge memo should be quashed.

10. Reliance is placed on a communication dated 04.05.2016, as per which there is an admission on the respondent's part that Question nos.31, 26A and 26B were not examined and further that the petitioner had filed a writ petition being W.P.(C)3429/2018, titled *R.S.Rana v. CFSL through its Director and Others* wherein this court directed the Tribunal to look into the grievance of the petitioner.
11. Reliance has also been placed on communication dated 16.12.2015 sent by the Addl. Commissioner of Police to the CAD Vigilance, Delhi Development Authority, in which the relevant part of the findings pertaining to the appellant are reproduced below:

"The report of CFSL clearly states that as per examination, it has not been possible to ascertain exact age of addition and alteration i.e. the squeezing might have been added on the day of examination itself."

In the light of above facts, no cognizable offense can be conclusively stated to have taken place and also, all the enquiry in the matter have already been taken place. Hence, the present complaint may be filed please.

It is, therefore, requested that the DDA may take its own course of action on merits, as there is no ground of registration of criminal case in this regard because it could

not be conclusively proved that answer sheet were in possession of Mr.R. S. Rana.”

12. We have heard learned counsels for the parties and given our thoughtful consideration to the matter.
13. At the outset, we may observe that we find no infirmity in the order passed by the Tribunal. We also find force in the submission made by Mr.Birbal, learned counsel for the respondent, that the present petition is premature since the enquiry report has now been submitted and show cause notice has been issued to the petitioner by the Disciplinary Authority. If, after the final order is passed by the Disciplinary Authority or the Appellate Authority, the petitioner is still aggrieved, he would be at a liberty to seek remedy as available to him in accordance with law, after the disciplinary proceedings attain finality within the department. Even otherwise, it is settled law that the court must be slow in quashing a charge memo, as has been held in the case of ***Ministry of Defence v. Prabhash Chandra Mirdha*** reported as (2012) 11 SCC 565. However, counsel for the petitioner insists on arguing the matter.
14. We are of the view that the Tribunal has rightly relied upon the law and has correctly taken into consideration that the Supreme Court has repeatedly cautioned the High Courts and the Tribunal in interfering with charge sheets for the reason that the allegations contained in the charge-sheet are to be decided in a departmental enquiry and only if an adverse order is passed by the Disciplinary Authority, the delinquent employee may be entitled to seek appropriate remedy by raising all grounds available, including the grounds regarding the validity of the charge memo, of the enquiry or defects in the process. In the case of

Union of India vs. Upender Singh reported as 1994 (3) SCC 357 it was held as under:

“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, Karnal v. Gopi Nath & Sons [1992 Supp (2) SCC 312] . 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 authorised 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.”

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.”

15. It would also be useful to refer to a decision of the Supreme Court in the case of *Secretary, Ministry of Defence and Others vs. Prabhas Chandra Mirdha* reported as (2012) 11 SCC 565, more particularly paras 10, 11 and 12 of the judgment, which are reproduced below:

10. Ordinarily a writ application does not lie against a charge-sheet 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. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa & Ors. v. Div.Commr., Mysore & Ors. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr. [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304]).

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting 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 v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200]

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. 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.”

16. The allegations made against the petitioner, in our view, are grave and serious as is evident upon perusing the charge-sheet. The officer of a government department has been charged and now has been found to be responsible for tampering with his own answer-sheet of English paper before sending the same for re-evaluation; and accordingly a charge memo has been issued and the inquiry has since been concluded. At this stage, for the petitioner to say that there is illegality or impropriety in the report of CFSL cannot be countenanced in the absence of any evidence to the contrary. Even to say that the High Court had directed the Tribunal to examine the grievance of the petitioner, and that that has not been done; and thus the charge-sheet should be quashed is completely mis-placed, since the High Court had only observed that the Tribunal would examine the grievance of the petitioner with respect to the aspect averred in the petition, albeit in accordance with law. The writ petition was in fact dismissed with the following observations:

“11. Needless to say, the Tribunal will examine the grievance of the petitioner with respect to the aspects adverted to in the petition, albeit, in accordance with law.”

17. Further, to say that the charge-sheet should be quashed in view of the letter dated 04.05.2016, in our view, is also without any force. The relevant paras of letter dated 04.05.2016 are extracted below:

- *The questioned documents marked Q-1 to Q-30 and Q-5A on the original answer sheet was examined in CFSL Chandigarh by our expert. Q31, Q-26 A & Q 26B were subsequently marked in the same original document by CFSL CBI and was examined using the available scientific facility in CFSL CBI New Delhi.*

- *CFSL CBI marked and examined the original document supplied by DDA, on the other hand your questions are based on the photocopy of the document said to be provided by DDA which is in fact not received in CFSL CBI.*

- *The general name of the instrument in issues is High Resolution Spectrophotometer and its brand name is Video Spectral Comparator (VSC 5000), Docu Centre Expert etc. CFSL CBI does not have VSC 5000 in working condition that time and what CFSL Chandigarh has is Docu Centre Expert. Both the instruments are High Resolution Spectrophotometer only and can serve the forensic purpose.*

- *It is important to mention that the expert can examine the document as a whole or the part of the document where he finds/suspects any possible forgery. In this case the term of reference by the DDA is to find out any addition/cutting etc.*

- *Reeta Rani Gupta SSO II (Documents) had no role in accepting/rejecting the case. Only the letter of regret was sent by Dr. Reeta Rani Gupta as per the practice and order by HoD (Document).*

Hope this reply is sufficient to clarify the doubts and no further queries will be entertained in this regard.”

18. For all the above reasons, we find no ground to allow this petition. We are, however, inclined to grant liberty to the petitioner to raise all grounds as may be available to the petitioner, in accordance with law in appropriate proceedings after the departmental enquiry against him is concluded.
19. Resultantly, writ petition is dismissed being without any merit, subject to payment of costs of Rs.10,000/- within four weeks to be deposited by

petitioner, with The High Court of Delhi (Middle Income Group) Legal Aid Society.

CM.APPL 49897/2019 (stay)

20. In view of the order passed in the writ petition, the application stands disposed of.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 20, 2019/rb

