

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 11.04.2019

+

W.P.(C) 3747/2019

DR. BIPIN BATRA

..... Petitioner

Through Mr.A.K.Bhardwaj, Advocate with
petitioner in person.

versus

NATIONAL BOARD OF EXAMINATIONS & ANR

..... Respondent

Through Mr.A.K.Behera with Mr.Kirtiman
Singh, Mr.Waize Ali Noor, Mr.Prateek Dhanda,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

CAV 381/2019

Learned counsel for the caveator/respondent no.1 enters
appearance.

The caveat stands discharged.

C.M. No.17152/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 3747/2019 & C.M. No.17153/2019

1. Issue notice. Learned counsel for the respondent no.1 accepts notice.
2. The petitioner has preferred the present petition to assail the order dated 18.03.2019 passed in O.A.No.100/1075/2018, whereby the Central Administrative Tribunal has rejected the said original application. Vide the said original application, the petitioner had

assailed his suspension, continuation of suspension from time to time, and the charge-sheet dated 12.02.2018 issued to him by the respondent no.1/Board.

3. We have heard the learned counsels at some length. Mr.Bhardwaj, who appears for the petitioner in the presence of the petitioner, gives up the challenge to the impugned order in so far as it rejects the petitioner's challenge to his initial suspension and continuation of suspension. We have also examined the allegations of personal *mala fides* made by the petitioner against the respondent no.2/Dr.Abhijat Sheth, President, National Board of Examination. We have also been shown the documents in that regard. Since, we do not find any merit in the said allegation of personal *mala fides*, Mr.Bhardwaj on instructions, has not pressed the same and he gives up the challenge to the disciplinary proceedings initiated against the petitioner on that ground.

4. Mr.Bhardwaj has submitted that the petitioner had raised several other pleas in relation to the legality of the disciplinary proceedings, including the plea that the charge-sheet had not been issued by the competent authority, before the Tribunal. However, a perusal of the original application shows that the petitioner has raised only a general ground in that regard, and there were no specific averments made in the original application to state as to who was the competent authority empowered to issue the charge-sheet to him. Mr.Bhardwaj submits that it is the petitioner's case that it was the governing body of the respondent no.1/Board, which was the competent authority in this regard. However, the charge-sheet was

issued by the President of the respondent no.1/Board and he was not competent to do so.

5. Mr.Bhardwaj submits that the petitioner had also raised the aspect of delay in issuance of the charge-sheet before the Tribunal and, in the original application, the petitioner had contended that the charge-sheet is vitiated on other counts as well. Mr.Bhardwaj further submits that the Tribunal has proceeded on the foundation that the charge-sheet could be assailed only on two grounds, namely that the charges do not constitute misconduct, and that the charge-sheet has not been issued by the competent authority. However, even there two aspects have not been examined in depth. He submits that the Division Bench of this Court has analysed several decisions in the case of *Than Singh v. Union of India & Ors.* 2003 (104) DLT 25 (DB) and in para 13 the circumstances in which a charge-sheet may be assailed have been set out as follows:-

“13. It is not in dispute that after the petitioner submitted his explanation in the years 1982 and 1983, no further action had been taken. The petitioner had been promoted twice unconditionally. He obtained the vigilance clearance. There cannot be any doubt whatsoever that the writ petitioner was entitled to raise the question of delay as also the condonation of misconduct. The learned Tribunal, unfortunately, did not address itself to the right question. It is now a well-settled principle of law that validity of a charge-sheet can be questioned on a limited ground. It is also well-settled that normally the Court or the Tribunal does not interfere at the stage of show-cause. However, once the disciplinary proceedings are over, there does not exist any bar in the way of delinquent officer to raise all contentions including once relating to invalidity of the charge-sheet. The grounds upon which the correctness or otherwise of the charge-sheet can be questioned are:

- i. *If it is not in conformity with law.*
- ii. *If it discloses bias or pre-judgment of the guilt of the charged employee.*
- iii. *There is non-application of mind in issuing the charge-sheet.*
- iv. *If it does not disclose any misconduct.*
- v. *It is vague.*
- vi. *If it is based on state allegations.*
- vii. *If it is issued mala fide.”*

(emphasis supplied)

6. Mr.Bhardwaj submits that the petitioner had raised pleas in his original application touching upon practically all the aforesaid aspects, which have not been considered by the Tribunal.

7. On the other hand, Mr.Behera, who appears on advance notice for the respondent no.1/Board, firstly submits that the petitioner has not participated in the disciplinary proceedings and when the Special Leave Petition of the petitioner was being heard before the Supreme Court, he was served with a copy of the inquiry report and time was granted to him to make his representation. Mr.Behera further submits that the time for making the representation was subsequently extended by the Tribunal while hearing the original application in question, pursuant to which the representation has been received and is under consideration.

8. Mr.Behera submits that the petitioner has been playing hide and seek, and it is a herculean task even to serve the petitioner with notices and documents. He further submits that the petitioner has consciously and calculatedly not participated in the inquiry proceedings, even though there was no stay obtained by him in this regard from any Tribunal or Court.

9. Mr.Behera submits that on the aspect that the charge-sheet had not been issued by the competent authority, the petitioner's counsel—at the time of hearing of the original application, had not advanced any specific submissions to state that the competent authority was the governing body of the respondent no.1/board, and not the President of the Board. Mr.Behera further submits that the submissions now sought to be advanced by the petitioner, including on the aspect of delay, were never canvassed before the Tribunal at the time of oral hearing. He points out that the impugned order is an oral order passed by the Tribunal in the presence of the counsels.

10. Mr.Behera submits that the petitioner has also not preferred a review petition, which he would have preferred if his case was that any of his submissions have not been dealt with by the Tribunal at the time of hearing the original application. He further submits that the respondents can satisfy this Court, in these proceedings itself, that the charge-sheet has been issued by the competent authority and, is in a position to meet all the legal submissions that the petitioner may advance on this aspect premised on the decision in the case of **Than Singh** (*supra*).

11. As noticed hereinabove, a perusal of the original application shows that the petitioner has raised general pleas without reference to any documents/rules *inter alia* on the aspect of the competence of the President of the respondent no.1/board to issue a charge-sheet to him. Same appears to be the position in relation to the other pleas of the petitioner.

12. We have no doubt—when Mr.Behera states that the petitioner

did not articulate his submissions before the Tribunal, that the petitioner actually did not do so. However, considering the fact that the petitioner has laid the foundation on the above aspects in the original application, and had also placed the documents in support thereof on record, and the fact that legal pleas can be raised even at a later stage, we are inclined to allow the petitioner to advance more specific submissions before the Tribunal regarding his challenge to the chargesheet on ground available to him, except the ground of personal malafidies against respondent No.2, which stands closed.

13. Accordingly, we set aside the impugned order, except in so far as it upholds the petitioner's suspension and continuation thereof, and also rejects the allegations of personal *mala fides* against the respondent no.2. We remand the matter back to the Tribunal for consideration of the petitioner's pleas on the aspect of the legality of the disciplinary proceedings, including on the aspect of the competence of the President of the respondent no.1/board to issue the charge-sheet to him.

14. It shall be open to the petitioner to raise his pleas in terms of the decision in ***Than Singh*** (*supra*) for this purpose. The petitioner shall file before the Tribunal within one week his written synopsis containing his pleas, with reference to the record, with an advance copy to the learned counsel for the respondents, who may also file a reply to the said written synopsis within a week thereafter.

15. The Tribunal shall endeavour to dispose of the original application after hearing the parties on merits within the next two months. It is made clear that no adjournment shall be granted to

either party by the Tribunal.

16. The petitioner, who is present in Court, states that any document, notices or communications that may be required to be served upon him, may be served upon his counsel namely Mr.A.K.Bhardwaj. Mr.A.K.Bhardwaj is also agreeable to this arrangement, since the respondents are aggrieved by the fact that the petitioner is avoiding service of the documents and notices. Service upon Mr.A.K.Bhardwaj of any communications directed towards the petitioner would be sufficient service, including for the purpose of disciplinary proceedings.

17. The parties shall appear before the Tribunal on 29.04.2019 and no further notice shall be required to be served to the parties.

18. The petition is disposed of alongwith the pending application in the above terms.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 11, 2019

sr