HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No. **Parties Name**	**WP. No.2752/2018** *Sikalchand Paraste* *Vs.* *State of M.P. & Ors.*
Date of Order	**06/01/2020**
Bench Constituted	**Single Bench**
Order delivered by	**Justice Sujoy Paul**
Whether approved for reporting	NO
Name of counsels for parties	**For Petitioner**: Shri D.K. Tiwari, Advocate **For respondents-State**: Shri Saurabh Sundar, Government Advocate
Law laid down	-
Significant paragraph numbers	-

O R D E R
(06.01.2020)

In this petition filed under Article 226 of the Constitution, the petitioner has called in question the legality, validity and propriety of the charge sheet dated 17.02.2016 (Annexure P/3).

2. Shri Tiwari, learned counsel for the petitioner submits that the charge sheet is bad in law on three counts namely (i) the petitioner is a Class-II employee. The Divisional Commissioner has no authority, jurisdiction and competence to issue the impugned charge sheet. The Divisional Commissioner is only competent to inflict a minor punishment whereas impugned charge sheet is issued for the purpose of imposing a major penalty; (ii) the charges are related with quasi judicial functioning of the petitioner. The petitioner passed various quasi judicial orders in his official capacity. All such orders are filed alongwith a list of documents. If the petitioner has passed any erroneous order in exercise of quasi judicial function, he cannot be subjected to a disciplinary proceeding. Reliance is placed on the judgment of Supreme Court reported in ***(1999) 7 SCC 409***

(Zunjarrao Bhikaji Nagarkar vs. Union of India); (iii) as per GAD Circular dated 12.11.1997, the coercive action of domestic enquiry against the petitioner runs contrary to this executive instructions.

3. To elaborate, Shri Tiwari urged that since the charge sheet is issued by Incompetent Authority and the charges are related with the judicial orders passed by the petitioner. Hence, the disciplinary proceedings must be axed.

4. Prayer is opposed by Shri Saurabh Sundar, learned G.A. on the basis of return. He submits that the notification/order dated 01.01.2002 (Annexure R/1) shows that the Divisional Commissioner was declared as 'Disciplinary Authority' and was empowered to impose minor penalties enumerated in Clause (i) to (iv) of Rule 10 of M.P.C.S. (C.C.A.) Rules, 1966 (hereinafter referred to as 'CCA Rules, 1966'). Thus, the Commissioner is Competent Authority for the purpose of initiation of disciplinary proceeding. Shri Sundar urged that this Court by order dated 16.03.2018 restrained the respondents from conducting the departmental enquiry. However, before passing of said order, on 05.03.2018 itself the enquiry was over and Inquiry Officer has submitted his detailed report (Annexure R/3). The petitioner has suppressed this fact in the WP. Learned government counsel urged that the scope of interference at the stage of charge sheet is limited. The charge sheet is not a final order. If certain factual allegations are made, it was open to the petitioner to file his response. He did so which was duly considered in the Inquiry Officer's report. He raised objection against the third ground raised by Shri Tiwari.

5. No other point is pressed by the parties.

6. I have bestowed my anxious consideration on the rival contentions of the parties and perused the record.

As to Point No.(i)

7. This is trite that *initiation of departmental enquir***y** and *imposition of punishment* are two different facets in service jurisprudence. The Apex Court

way back in (***1970) 1 SCC 108 (State of Madhya Pradesh & Ors. Shardul Singh)*** opined that under Article 311 of the Constitution, the imposition of punishment is a different facet, which protects an employee from imposition of certain punishments by an authority, who is inferior in rank than his Appointing Authority. The Apex Court poignantly made it clear that it does not mean that the charge sheet should also be issued by an authority, who is competent to impose a major penalty, which is covered under Article 311 of the Constitution. In the said case, the Apex Court held as under:-

> *"Article 311 (1) does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that the enquiry should be done at its instance. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein rules could have been framed under Article 309. The provisions of Article 311 confer additional rights on the Civil servants.* ***It is not possible to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in the Article****."*

8. A plain reading of Rule 14(2) of the CCA Rules, 1966 makes it clear that the charge sheet can be issued by the Disciplinary Authority. The definition of Disciplinary Authority is defined in Rule 2(d) of the CCA Rules, 1966, which reads as under:-

> *"(d) "disciplinary authority" means the authority competent under these rules to impose on a Government servant* ***any of the penalties specified in Rule 10****;"*

9. A bare perusal of this provision makes it clear that the Disciplinary Authority means an authority competent under these rules to impose any of the penalties specified in Rule 10. Pausing here for a moment, it is clear like noonday that the rule makers have decided to use the expression "any of the penalties specified in Rule 10". Thus, the authority who is competent to inflict minor punishment also becomes a "Disciplinary Authority" under the rules. Thus, the Commissioner becomes a "Disciplinary Authority" for the petitioner also because indisputably he is competent to impose minor

punishments which are covered under Rule 10 of CCA Rules, 1966. Thus, being the 'Disciplinary Authority' he is competent to issue a charge sheet against the petitioner. The petitioner is confused about the aspects of initiation of enquiry and imposition of punishment. At the cost of repetition, since the Commissioner is a 'Disciplinary Authority' by conjoint reading of Rule 2(d) and Rule 12 of CCA Rules, 1966 he is very much competent to initiate departmental enquiry as per Rule 14.

10. So far the second contention is concerned, the petitioner has erroneously placed reliance on the judgment of Supreme Court in the case of ***Zunjarrao*** (supra). In ***(2006) 5 SCC 680 (Union of India & Ors. vs. Duli Chand)***, the Apex Court opined as under:-

> ***"8.*** *In 1999 another Bench of two Judges in Zunjarrao Bhikaji Nagarkar [(1999) 7 SCC 409] considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the assessee to whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge-sheet to the charged officer."*
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> *[Emphasis Supplied]*

The allegations against the petitioner are factual in nature. The petitioner has already filed reply and participated in the disciplinary proceedings. The Inquiry Officer has already prepared his report. The charges against the petitioner are as under:

> ''मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम–1966 के नियम–14 के उप नियम (3) के अंतर्गत निर्दिष्ट अनुशासनिक प्राधिकारी द्वारा श्री एस0सी0 परस्ते, अपर कलेक्टर, (निलंबित) बैहर, जिला–बालाघाट के विरूद्ध निम्नलिखित आरोप अधिरोपित किये जाते हैं:–
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> **आरोप कमांक–1**

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये, आपके कार्य क्षेत्रांतर्गत सक्षम अधिकारी की अनुमति के बिना अवैध रूप वृक्ष कटाई होना पाया गया।

आरोप कमांक–2

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये आपके कार्य क्षेत्र के अंतर्गत लगातार हो रही वृक्षों की अवैध कटाई रोकने के लिये आपके द्वारा कोई कार्यवाही नहीं की गई।

आरोप कमांक–3

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये अपने कार्यकाल के दौरान वृक्षों की अवैध रूप से कटाई के प्रकरणों में अवैध रूप से काटी गई लकड़ियों को राजसात नहीं किया गया।

आरोप कमांक–4

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये अपने कार्यकाल के दौरान नियमों की जानबूझकर अनदेखीकर षड्यंत्रपूर्वक सांठ–गांठ कर कम मात्रा में अर्थदण्ड आरोपित कर शासन की राजस्व हानि पहुंचाई गई है।

आरोप कमांक–5

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये अपने कार्यकाल के दौरान अपने पद का दुरूपयोग कर पक्षकारों को अनैतिक लाभ पहुंचाया गया है। जैसे रा0प्र0 क003/अ–63/2014–15, मौजा ढिपुर, मध्यप्रदेश शासन विरूद्ध बालाराम पिता लखन गोंड में संलग्न अपर कलेक्टर, बैहर के पत्र कमांक 173, दिनांक 26/6/2015 एवं तहसीलदार, परसवाडा के पत्र कमांक क्यू दिनांक 21/6/2015 मे स्पष्ट है कि भूमिस्वामी नैनवती पति मोहन के खसरा कमांक 75/1 से अवैध वृक्ष कटाई का कोई प्रकरण दर्ज कर कार्यवाही नहीं होने का लेख किया गया है।

आरोप कमांक–6

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये अपने कार्यकाल के दौरान अवैध वृक्ष कटाई में निर्धारित

विहित प्रक्रिया का पालन नहीं किया गया। जैसे वनविभाग से मूल्यांकन रिपोर्ट नहीं लिया गया है।

आरोप कमांक–7

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये अपने कार्यकाल के दौरान, अपर कलेक्टर एवं हितग्राही का संयुक्त खाता खोलकर विधि अनुसार प्रक्रिया का पालन कराने एवं अनुश्रवण मे असफल रहे। जिन प्रकरणों में संयुक्त खाता खोला गया तथा राशि जमा की गई। उन प्रकरणों मे राशि जमा करने के पश्चात् एक–दो सप्ताह की अवधि के भीतर ही जमा राशि आहरित कर ली गई।

आरोप कमांक–8

आपके द्वारा अपर कलेक्टर, बैहर, जिला, बालाघाट के पद पर पदस्थ रहते हुये अपने कार्यकाल के दौरान, मध्यप्रदेश आदिम जनजातियों का संरक्षण (वृक्षों में हित) अधिनियम की धारा–9 के अंतर्गत किसी भी प्रकरण में समुचित कार्यवाही नहीं की गई।

आपका यह कृत्य मध्यप्रदेश सिविल सेवा (आचरण) नियम–1965 के नियम–3 के अंतर्गत घोर कदाचरण का द्योतक है। इस प्रकार आपने उक्त कृत्य कर, मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम–1966 के नियम–14 के अन्तर्गत अपने आपको अनुशासनात्मक कार्यवाही का दायी बना लिया है।

अतएव आपको एतद् द्वारा सूचित किया जाता है कि, उपरोक्त आरोप के संबंध में जिनका विस्तृत विवरण संलग्न अभिकथन पत्रक में दर्शाया गया है, आपका विधि अनुसार विचारण किया जायेगा।''

11. A plain reading of charge-sheet shows that allegations of favouritism, dereliction of duty and negligence are alleged against the petitioner. In this case, there exist allegations against the petitioner which shows an element of culpability. Whether or not these charges are covered by any quasi judicial order passed by the petitioner needs to be gone into by the Inquiry Officer and Disciplinary Authority. At this stage, this Court is not obliged to enter into the factual arena of the matter.

12. This Court in ***Ravi Shanker Shukla Vs. The State of Madhya Pradesh*** (***W.P. No.11549/2016***) has opined as under:

> "In the opinion of this court, at this stage, the scope for interference against the charge sheet is limited. Correctness of the allegations cannot be gone into by a writ court at this stage. The charge-sheet and show- cause notice does not give any cause of action to the petitioner. If petitioner has justifiable defense, he can putforth his case during the departmental inquiry. In *Union of India Vs. Upendra Singh* -(1994) 3 SCC 353, the Apex Court held that the writ court cannot go into the correctness of the allegations mentioned in the charge-sheet. In *Union of India Vs. Kunishetty Satyanarayana*-(2006) 12 SCC 28, the Supreme Court held that show cause notice or charge-sheet does not give any cause of action to the delinquent employee. In *Jagdish Baheti Vs. High Court of MP*-2015(2) MPHT-382, the Division Bench of this Court held that scope of interference at the stage of charge-sheet is very limited."

13. In the light of the aforesaid order, no ground for interference could be established at the stage of issuance of charge-sheet.

14. So far third point is concerned, suffice it to say that the said administrative instructions nowhere comes in the way of the Disciplinary Authority to initiate disciplinary proceeding against the petitioner.

15. This Court has no doubt that the Disciplinary Authority will supply copy of enquiry report to the petitioner in accordance with CCA Rules, 1966 and ask for his response. It will be open for the Disciplinary Authority to take decision as per Rule 15 of the CCA Rules on the said enquiry report. At this stage, no case is made out for interference against the impugned charge sheet.

16. The petition is dismissed. No cost.

(SUJOY PAUL)
JUDGE

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