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

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Date of decision: 27.07.2020

+ WP(C) 4322/2020 and CM 15566/2020 (stay)

VIKASH KUMAR

..... Petitioner

Through Petitioner in person

versus

NTPC LIMITED & ORS.

..... Respondents

Through Mr. Tushar Mehta, Solicitor
General with Mr. Aadarsh
Tripathi, Mr. Anish Gupta,
Mr. Sanjay Ghose and Mr.
Nikhil Kandpal, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Hearing has been conducted through Video Conferencing.
2. Present writ petition assails the Charge Memorandum dated 04.05.2020 and the subsequent orders passed in the proceedings thereto. Grievance of Petitioner in the present petition is two-fold. Firstly, that the action of the Respondent in issuing the Charge Memo is tainted with malafides. Petitioner is a Convenor of NTPC Executives' Rights Forum (NERF) and in that capacity, he had raised

certain grievances regarding the Annual Performance Appraisal Reporting System followed by Respondents, which is against the judgement of the Supreme Court in *Dev Dutt vs. Union of India & Ors. 2008 (8) SCC 725*. Petitioner on various platforms brought out that the System was not transparent and fair and this triggered the issuance of chargesheet.

3. Second grievance is that the Charge Memo, as framed, is not clear and definite, and the law requires that the chargesheet should not be vague but must clearly communicate to the Charged Officer the exact nature of allegations so that he can effectively respond and defend himself.

4. An ancillary submission has also been made that the Inquiry Officer is not recording the proceedings correctly including the submissions made by Petitioner. He submits that the order-sheets indicate distorted version of the submissions made by Petitioner and therefore, requests that video footage of the inquiry proceedings be made available to him.

5. Mr. Tushar Mehta, Learned Solicitor General appearing on behalf of Respondents submits that it is not open to the Court, in a judicial review, at the threshold, to interfere with the chargesheet and interdict the disciplinary proceedings. He submits that law is well settled that the disciplinary proceedings must be permitted to take their own course. Every opportunity of hearing will be given to the

Petitioner to defend himself and prove his innocence during the enquiry and principles of natural justice as well as procedures of the Disciplinary Enquiry shall be complied with. Petitioner has the right and liberty to raise his grievances, if any, after the enquiry, in accordance with law.

6. I have heard Mr. Tushar Mehta, Learned Solicitor General and Mr. Vikash Kumar, petitioner in person.

7. I find force in the submission of Mr. Mehta, Learned Solicitor General that it is not for the Courts in the judicial review to interfere at the threshold at the stage of the chargesheet. Disciplinary proceedings must be allowed to run their own course. It has been repeatedly held by Courts that truth or falsity of the allegations cannot be determined by a Court at the outset when the chargesheet is challenged. Chargesheet does not amount to holding a person guilty and the interference can be in very exceptional circumstances, such as when it has been issued by a person having no jurisdiction or competence to do so.

8. Supreme Court in the case of ***Secretary, Ministry of Defence & Ors. vs. Prabhash Chandra Mirdha 2012 (11) SCC 565***, after referring to various earlier judgements, held as under:

“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 v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(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.”

9. Petitioner has raised certain objections to the vagueness of the charges and also sought to argue that the actions of Petitioner were in his capacity as Convener and as per Rules. It would be open to Petitioner to raise all these issues in his defence, during the course of enquiry. The contentions as well as objections raised by Petitioner to the chargesheet in the present petition are left open to be raised by Petitioner at the appropriate stage.

10. In so far as daily order sheets of the Inquiry Officer are concerned, same will be sent to Petitioner via email as soon as proceedings are over. It is open to Petitioner to take an objection, in case there is any discrepancy in the order sheet as far as recording of his submissions/arguments is concerned.

11. In view of the above, Petitioner is not entitled to the relief of quashing the chargesheet, as prayed for.

12. Petition alongwith the application filed herewith, is disposed of with the above observations.

JYOTI SINGH, J

JULY 27, 2020

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