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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDICTION

WRIT PETITION NO. 9307 OF 2019
WITH
INTERIM APPLICATION NO. 2448 OF 2021

Neeraj Singh S/o Dr. Tribhuwan Singh .. Petitioner

Versus

Union of India & Ors. .. Respondents

Mr. Rajeev Kumar a/w Mr. Aditya Parmar for petitioner.
Mr. Subir Kumar a/w Ms. Salonee Patil for respondents.

C0RAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: OCTOBER 28, 2021

PC:

1. The petitioner is a member of the Indian Revenue Service. Currently, he is the Commissioner of Income Tax (Audit), Mumbai (under suspension).

2. The President proposed to hold an inquiry against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter "the 1965 Rules" for short). Accordingly, memorandum of charge-sheet dated 17th June, 2019 was drawn up against the petitioner containing three charges. The gist of the three charges are as follows: -

Article of Charge-I

The petitioner, in contravention of Rule 15(1)(c) of the Central Civil Services (Conduct) Rules, 1964, held the post of President of a football club, Chirag United, which played in the Calcutta Football League First Division, and thereby committed misconduct.

Article of Charge-II

The petitioner, without seeking prior permission from the competent authority, had visited Thailand, which is in violation of Office Memorandum dated 27th July 2015 of the Department of Personnel & Training (hereafter the DoPT" for short) and accordingly committed misconduct.

Article of Charge-III

Based on an FIR lodged with the Hare Street Police Station, Kolkata, against the petitioner and others, it has appeared that the petitioner may not have maintained confidentiality in the performance of his official duties as required by law and thereby has committed misconduct.

3. The aforesaid charge-sheet was followed by an order dated 1st July, 2019 under Rule 10(1) of the 1965 Rules, whereby the petitioner was placed under suspension pending inquiry.

4. In the meanwhile, however, the petitioner submitted his written statement of defence dated 21st June, 2019, wherein he categorically denied and disputed the charges levelled against him. According to him, he never held the post of President of the football club Chirag United. Further, he never visited

Thailand after issuance of the relevant office memorandum by the DoPT. Finally, he contended that the FIR is false and fabricated. The allegations constituting alleged offence pertain to the period when he had duly handed over charge on his transfer to Mumbai and that the allegation that he has communicated official document is premised on suspicion and conjecture. While so submitting, the petitioner contended that the charges were vague on account of the relevant dates/period not having been mentioned therein when he allegedly functioned as a President of the football club or visited Thailand.

5. An Inquiry Officer was appointed on 13th September, 2019 to inquire into the charges levelled against the petitioner. It is not in dispute that when proceeding of inquiry was convened on 18th February, 2020, the Presenting Officer conveyed his inability to present documentary evidence in support of the charges levelled against the petitioner, whereupon the Inquiry Officer adjourned the inquiry *sine die*.

6. In between, the petitioner had approached the Central Administrative Tribunal, Mumbai Bench, Mumbai by instituting Original Application No. 210/00495/2019. In such application, he prayed for quashing of the memorandum of charges dated 17th June, 2019 as well as consequential benefits. The Tribunal had the occasion to hear the parties on 23rd July, 2019 and by an order dated 2nd August, 2019, dismissed the original application at the admission stage as premature. The decisions of the Supreme Court as well as other Courts cited on behalf of the parties were duly considered and it was held that by mere

issuance of charge-sheet no right of the petitioner has been affected. The order dated 2nd August, 2019 forms the subject matter of challenge in this writ petition.

7. The writ petition was first considered by us on 25th August, 2021 when affidavits were called for. However, by that time, the inquiry stood stalled because of the order dated 18th February, 2020 of the Inquiry Officer referred to above. Although the inquiry stood stalled, the petitioner continued to remain under suspension with consequent payment of subsistence allowance resulting in drainage of public exchequer without extracting any work from him. We had, accordingly, by our order dated 8th September, 2021 called upon Mr. Subir Kumar, learned counsel representing the respondents as to why the petitioner may not be allowed to resume duty upon revocation of suspension having regard to the fact that the Presenting Officer was not in a position to present documents in support of the prosecution case before the Enquiry Officer. He was directed to obtain instructions. On 15th September, 2021, Mr. Subir Kumar submitted before us by referring to a compilation of documents that appropriate materials had been collected by the Presenting Officer and that very soon an approach would be made before the Inquiry Officer to resume the inquiry. We had, by an order passed on that date, permitted the Inquiry Officer to resume the inquiry provided an approach in that regard were made by the prosecution within two weeks. Notice was also directed to be served on the petitioner and he was left free to participate in the inquiry without prejudice to his rights and contentions that the charge-sheet was

unsustainable in law. We had also called upon Mr. Subir Kumar to place before us the decision of the Review Committee which, we were informed, had decided to continue the suspension of the petitioner despite the fact that all materials had been collected in support of the prosecution case and that there was no imminent likelihood of the petitioner either tampering with the evidence so collected or influencing witnesses who were to depose in support of the prosecution case at the inquiry.

8. Today, Mr. Subir Kumar has placed before us the decision of the Review Committee dated 14th September, 2021. It has extended the period of suspension of the petitioner beyond 180 days from 17th September, 2021 or until further orders, on the ground that revocation of suspension of the petitioner would jeopardize the conduct of inquiry proceedings. It is, however, silent as to how revocation of suspension would jeopardize the conduct of the inquiry proceedings. We have no hesitation to hold that the order is cryptic and does not satisfy the requirement of law for continuing an officer under suspension. Be that as it may, since such order is not under challenge in these proceedings, we refrain from interfering with the same.

9. Turning to the merits of the challenge laid by the petitioner that the charges are vague, we find no reason to uphold the same. Indeed, the dates/period during which the petitioner is alleged to have functioned as a President of the football club as well as the period of his visit to Thailand are conspicuous by its absence in the charge-sheet. However, nothing turns on it. The petitioner has filed his written

statement of defence wherein it is his clear case that he has neither held the post of President of any football club and nor has he visited Thailand after issuance of the relevant office memorandum by the DoPT. It has also been contended that there has been no occasion for him to divulge official records. Also, an alibi seems to have been raised by the petitioner by referring to his transfer to Mumbai.

10. Having regard to the aforesaid specific nature of defence raised by the petitioner to the charges, we are not persuaded to accept the contention advanced by Mr. Rajeev Kumar, learned counsel for the petitioner, that the charges are vague. A charge is said to be vague when it does not disclose with sufficient clarity and precision what the allegation against the charged officer is. Law requires spelling out the part the charged officer played amounting to misconduct. The present case is certainly not one where the petitioner as charged officer, has been unable to comprehend despite sincere endeavours what the accusation is, that he should answer. Now that an inquiry into his conduct has been ordered, the burden is entirely on the prosecution to establish by reference to oral and documentary evidence that the petitioner, in fact, functioned as a President of a football club during a particular period, travelled to Thailand at a particular time and had also divulged official records. Obviously, once this burden is discharged, the onus would shift to the petitioner. But in any event, that the petitioner has submitted his written statement of defence would not exonerate the prosecution from bringing home the charges.

11. Mr. Rajiv Kumar has relied on the decisions of the Supreme Court in **Surath Chandra Chakravarty vs. The State of West Bengal**, reported in AIR 1971 SC 752, and **Anant R. Kulkarni vs. Y.P. Education Society**, reported in (2013) 6 SCC 515.

12. In **Surath Chandra Chakravarty** (supra), the charge-sheet did not give a clear picture to the delinquent to make out an effective defence for which the Court had interfered. That is not the case here. **Anant R. Kulkarni** (supra) highlights the need to serve a charge-sheet providing to the delinquent a clear, specific and definite description of the charge against him. The said decision also does not advance the cause of the petitioner because the defence raised by him does not admit of any confusion as to what he has been charged with.

13. We, therefore, overrule the objection of the petitioner to the charge-sheet on the ground that the charges are vague.

14. We are also of the view that the Tribunal was right in holding the original application to be devoid of merit, since mere issuance of a charge-sheet cannot be said to affect any legal right of the officer proceeded against. In this connection, reference may profitably be made to the decision of the Supreme Court in **Union of India vs. Kunisetty Satyanarayana**, reported in (2006) 12 SCC 28. Paragraphs 13 and 14 of the said decision being relevant, are quoted hereinbelow: -

> “13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board* v. *Ramesh Kumar Singh,* (1996) 1 SCC 327, *Special Director* v. *Mohd. Ghulam Ghouse,* (2004) 3 SCC 440, *Ulagappa* v. *Divisional Commr., Mysore*, (2001) 10 SCC 639, *State of U.P.* v. *Brahm Datt Sharma*, (1987) 2 SCC 179, etc.
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> 14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

15. Having regard to the aforesaid settled position of law, we hold that the challenge laid to the charge-sheet by the petitioner is unsustainable and, accordingly, uphold the decision of the Tribunal under challenge.

16. However, before parting, we need to deal with a point raised by Mr. Rajeev Kumar in the course of his arguments. He has invited our attention to an amendment in Rule 14 of the 1965 Rules. By notification dated 2nd June, 2017, sub-rule 24 has been introduced in Rule 14, reading as follows: -

> “(24)(a) The Inquiring Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority.

(b) Where it is not possible to adhere to the time limit specified in clause (a), the Inquiring Authority may record the reasons and seek extension of time from the disciplinary authority in writing, who may allow an additional time not exceeding six months for completion of the Inquiry, at a time.

(c) The extension for a period not exceeding six months at a time may be allowed for any good and sufficient reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorised by the Disciplinary Authority on his behalf."

17. According to Mr. Rajeev Kumar, the inquiry must be interdicted because neither has the inquiry been completed within six months of appointment of the Inquiry Officer nor has he sought for extension of time from the disciplinary authority.

18. Indeed, the object of introduction of sub-rule (24) of Rule 14 is to expedite inquiries that are initiated in connection with departmental proceedings against public servants governed by the 1965 Rules. Sub-rule (24), however, does not provide any consequence for the failure of the Inquiring Authority either to submit his report within a period of six months from the date of receipt of the order of his appointment as Inquiring Authority or for the failure to obtain extension of time from the disciplinary authority for completing the inquiry. In the absence of any consequence, the provision has to be regarded as directory. We draw inspiration from the decision of the Supreme Court in **Sharif-ud-din vs. Abdul Gani Lone**, reported in AIR 1980 SC 303, which has laid down the law that a procedural rule ordinarily should not be construed as mandatory and whenever a statute prescribes that a particular act is to be done

in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, such a requirement would be mandatory. Also, in **Dalchand vs. Municipal Corporation of Bhopal**, reported in AIR 1983 SC 303, it has been held that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period.

19. For the reasons as above, this contention of Mr. Rajeev Kumar also stands overruled.

20. We have noticed that the Inquiry Officer in the inquiry proceedings conducted on 20th October, 2021 has held sub-rule (24) to be directory in nature. However, it goes without saying that the Inquiry Officer cannot proceed at his sweet will and take an indefinite period of time for completing the inquiry. Even if sub-rule (24) is directory, there has to be substantial compliance. Once it is the mandate of procedural fairness that an inquiry has to be completed with utmost expedition and to achieve such result sub-rule (24) has been introduced by way of an amendment in Rule 14 of the 1965 Rules, there can be no two opinions that inquiry in the present case too has to be conducted and completed within the time-frame of the nature indicated in sub-rule (24) unless, of course, there are exceptional reasons for which the disciplinary authority extends the time for completion of inquiry.

21. We, therefore, propose to provide default clauses in our order to facilitate expeditious completion of the inquiry initiated

against the petitioner which, in our view, would sufficiently serve the cause of justice. Since 2nd November, 2021 is the next date fixed for the inquiry proceedings, we direct that the Inquiry Officer shall proceed with the inquiry on that date and shall, in any case, make honest endeavour to complete the inquiry and submit his report by the end of February, 2022, provided the petitioner fully cooperates with him in that regard and does not seek any unnecessary adjournment. The petitioner shall be afforded adequate and reasonable opportunity to participate in the inquiry in accordance with law. In case the Inquiry Officer’s report is not submitted before the disciplinary authority by the end of February, 2022, the suspension of the petitioner shall stand revoked and he shall be allowed to resume his duty. We also make it clear that if, for any reason whatsoever, the inquiry report is not submitted by the end of February, 2022, the inquiry must be completed and report submitted by April, 2022, failing which the inquiry shall stand lapsed and the disciplinary proceedings dropped. Such onerous stipulations are made bearing in mind the fact that the Inquiry Officer may not have acted within jurisdiction in adjourning the inquiry *sine die* on 18th February, 2020 on the ground that the Presenting Officer did not have the documentary evidence to support the prosecution case. Since the Presenting Officer was unable to proceed, the Inquiry Officer having regard to Rule 14 of the 1965 Rules, as it stands after the amendments, should have closed the inquiry then and there in terms of the provisions contained in sub-rule (24) thereof. The Inquiry Officer is required to be neutral and he ought not to have given time to the Presenting Officer to collect materials against the petitioner. However, since the position has now changed because of collection of materials by the Presenting Officer, and having regard to the gravity of the charges levelled against the petitioner, we feel that the inquiry must be expedited, and conducted and completed in the manner as aforesaid within the time-frame fixed above to avoid any abuse of process of law.

22. Since we have not called for any affidavit-in-reply from the respondents to deal with the contents of the writ petition as well as the interim application filed by the petitioner, allegations levelled therein shall not be deemed to have been admitted by the respondents.

23. With the aforesaid directions, this writ petition stands disposed of. No costs.

24. In view of the above order, nothing survives in the interim application and the same too stands disposed of. No costs.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**

PRAVIN DASHARATH PANDIT

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