

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP 13177 of 2021 (O&M)

Date of Decision: December 14th, 2021

Gurpreet Singh Thind

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sunil Kumar Nehra Advocate
for the petitioner.

Mr.Charanpreet Singh, AAG, Punjab.

-.-

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution *inter-alia* praying for quashing of the impugned charge-sheet dated 12.09.2019 issued against petitioner under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, (for short 'the Rules'); as well as consequent adverse remarks recorded in his Annual Confidential Report (for short 'ACR') for the period 04.10.2018 to 16.02.2019.

(2) Brief facts are that petitioner was joined as member of Punjab Civil Services (Executive Branch) (for short 'PCS') on 08.06.2004.

(3) Being PCS officer, he was posted as Secretary, Regional Transport Authority, Patiala (for short 'Secretary, RTA'), from 29.08.2017 to

18.02.2019. In January, 2019, when he was working as such, some private transporter, filed CWP No. 1504 of 2019 *inter-alia* praying:-

- (i) for quashing of the order dated 23.08.2017 passed by State Transport Commissioner, Punjab; whereby powers for framing and approval of time table were delegated to the Secretary, RTA, under Act of 1988;
- (ii) further to restrain respondent No.3 i.e. Secretary, RTA from misusing powers to change or approve the time table of buses on Jalandhar-Bathinda route.

The petitioner was arrayed as party-respondent No.3 in his official capacity. The writ petition came up for hearing on 25.01.2019 and in which following order was passed:-

“Learned State counsel prays for some time to file reply. She, however, on instructions from Dharamjit Singh, O/o RTA Patiala submits that there is no provision as per Motor Vehicles Act for framing of joint time-table of the routes. Three weeks’ time is granted for filing reply.

To come up on 19.03.2019.

Status quo be maintained till then.

Secretary, Regional Transport Authority, Patiala, is directed to remain present in court alongwith relevant record on the next date of hearing.”

- (4) On 18.02.2019, petitioner was transferred from the post of Secretary, RTA to Additional Deputy Commissioner (Development) Bathinda and some other officer joined in his place. On 19.03.2019, reply on behalf of official respondents was filed by the newly posted Secretary, RTA and matter stood adjourned for 21.05.2019.

(5) Later on, it came to the notice of respondents that in above writ petition, a draft reply was prepared by present petitioner while incorporating some wrong facts, and that led to passing of the *status quo* order dated 25.01.2019 .

(6) As a result thereof, vide communication dated 27.06.2019 the petitioner was asked to give his explanation. In response thereto he submitted his written reply on 13.08.2019. Since petitioner was not able to satisfy the competent authority, therefore the impugned charge sheet was served against him. The copy of memorandum along with statement of imputations read as under :-

ARTICLES OF CHARGES

1. *Filing of reply to the Civil Writ Petition No. 1504 of 2019 in the Hon'ble High Court, without approval of the Government and without getting the same vetted from the office of Advocate General, Punjab.*
2. *In the above case, on the basis of the reply prepared by you, in which wrong facts were mentioned in contradiction to the instructions issued, the Government Counsel has given the statement in the Hon'ble High Court to the effect that the Secretary, Regional Transport Authority has no right to frame the joint time table. Whereas as per letter dated 05.12.2018, issued by State Transport Commissioner, Punjab, instructions were issued to all the four Secretaries, Regional Transport Authority, (Patiala, Jalandhar, Ferozepur and Bathinda) of the State of Punjab, to frame/ approve joint time table."*

STATEMENT OF IMPUNTATIONS OF MISCONDUCT.

“When you were posted as Secretary, Regional Transport Authority, Patiala, then you at your own level without the approval of the State Transport Commissioner (Respondent No.2) and Principal Secretary Transport (Respondent No.1) in CWP 1504 of 2019 filed reply dated 25.01.2019, and misrepresented that the Secretary, Transport Authority has no authority to frame joint time table, whereas vide letter dated 05.12.2018 issued by State Transport Commissioner, Punjab, instructions were issued to the four Secretaries of the State of Punjab, Regional Transport Authority (Patiala, Jalandhar, Ferozepur and Bathinda) to frame/ approve a joint time table. This reply was handed over to the Government counsel without getting approval from the Government and without getting it vetted from the office of Advocate General, Punjab. The Government counsel made a statement in the Punjab and Haryana High Court on the basis of this incorrect reply. As a result thereof, the Hon’ble Court passed the order of status quo in the aforesaid Civil Writ Petition, which resulted in undue benefit to the private transporters and the Government had to face an embarrassing situation.

- 2. While taking the above action, you have shown the proof of being an irresponsible officer. As a result thereof, you have made yourself liable for major punishment under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.”*

(7) The above allegations were denied by petitioner vide his detailed reply dated 24.09.2019, but no further action has been taken in the

matter. On the other hand, due to pendency of the impugned charge sheet, the ACR of the petitioner was downgraded as “Average”.

Hence, present writ petition.

(8) Upon notice of motion, respondents filed reply opposing the claim of the petitioner inter alia on the premise:-

(i) That against the impugned adverse remarks (04.10.2018 to 16.02.2019), petitioner submitted his representation and after consideration of the same, vide order dated 22.07.2021, the remarks have been converted to “advisory” in nature.

(ii) Further submitted that although petitioner denied the allegations leveled in the impugned charge-sheet, but competent authority was not satisfied with his explanation. Therefore, after due consideration of the matter, Sh.Surjit Singh Dhillon, IAS (Retd.) has been appointed as Enquiry Officer on 31.08.2021 to submit his report in the matter.

(9) CONTENTIONS RAISED ON BEHALF OF THE PETITIONER:

A. The petitioner received a telephonic call on 24.01.2019, regarding pendency of *CWP No.1504 of 2019*, for 25.01.2019. In view of the urgency, he prepared short draft reply; but actually, it was not filed in the court. In paras 6 & 7 of the draft reply, specifically submitted that as per instructions dated 05.12.2018, the Secretary, RTA has authority for framing and approving of time table; but somehow, it escaped from the notice of government counsel at the time of hearing.

B. Also submitted that draft reply was prepared merely for an assistance of the government counsel and it had not been signed by the

petitioner; thus, by no stretch of imagination he can be held responsible for the *status-quo* order dated 25.01.2019.

C. Also submitted that on 18.02.2019, petitioner was transferred from Secretary, RTA to Additional Deputy Commissioner (Development) Bathinda; but no efforts were made by the respondents for vacation of above *status-quo* order.

D. Further submitted that the impugned charge-sheet has been issued contrary to factual position of the case, as there is no truth in the allegations; yet, despite receipt of proper reply, the same is not closed by the respondents for the reasons best known to them.

E. The action of the respondents while issuing the impugned charge sheet is in violation of Articles 14 & 16 of the Constitution.

CONTENTIONS RAISED ON BEHALF OF RESPONDENTS:-

Learned State counsel while opposing the contentions of petitioner, submitted that after consideration of his reply to charge-sheet, inquiry officer has already been appointed on 31.08.2021 and disciplinary proceedings are going on; thus, it is not appropriate for this Court to interfere with the matter at this stage.

Also submitted that charges levelled against the petitioner are yet to be inquired into by the inquiry officer and he shall submit his report after consideration of the material to be brought on record as per law. Further submitted that it is premature for this court to go into the merits of the allegations while exercising powers under Article 226 of the Constitution; thus prayed for dismissal of the writ petition.

(10) Heard learned counsel for the parties and perused the paper book along with records.

(11) At the outset, learned counsel, on instructions from petitioner, submitted that since as per order dated 22.07.2021, the adverse remarks recorded in the ACR have been ordered to be treated as advisory; therefore, he does not wish to press the petition to that extent and prayed to withdraw the same with liberty to take recourse to the remedy as per law, if needed. Petitioner is permitted to do so.

(12) After hearing both sides, the sole point for consideration can be culled out as under:-

“ Whether in view of the facts and circumstances of the present case, while exercising jurisdiction under Article 226, the impugned charge-sheet dated 12.09.2019 is liable to be quashed by this Court?”

(13) **LEGAL PARAMETER:**

The Hon'ble Supreme Court in **Union of India & ors. vs. K.K. Dhawan, (1993) 2 SCC 56** (3 Judges Bench) while setting aside the order of Central Administrative Tribunal, Principal Bench New Delhi (whereby charge sheet against quasi-judicial authority had been quashed) in paras No. 28 & 29 of the judgment held as under:-

“.....Thus, we conclude that the disciplinary action can be taken in the following cases

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) *if there is prima facie material to show recklessness or misconduct in the discharge of his duty;*

(iii) *if he has acted in a manner which is unbecoming of a Government servant;*

(iv) *if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;*

(v) *if he had acted in order to unduly favour a party;*

(vi) *if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."*

29. *The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."*

Again Hon'ble Supreme Court, in **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha**, (2012) 11 SCC 565 after summarizing the case law on point in issue, held that ordinarily, against a charge-sheet or show-cause notice, writ petition is not maintainable; as it does not give rise to any cause of action and paras 10, 11 & 12 of judgment being relevant, are extracted 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, Bihar State Housing Board v. Ramesh Kumar Singh; Ulagappa v. Commr., Special Director v. Mohd. Ghulam Ghouse and Union of India v. Kunisetty Satyanarayana.)

11. *In State of Orissa v. Sangram Keshari Misra (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).*

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.”

In view of the above, it can be safely concluded that normally a charge-sheet is not to be quashed at the threshold. It is the function of disciplinary authority to find out the correctness or truth of charges; thus to deal with *the charge sheet on merits at such an early stage* would be premature, *unless the same has been issued by a person lacking competency or jurisdiction.*

(14) There is no dispute that at the relevant point of time, petitioner was working as Secretary, RTA, and in terms of the instructions dated 05.12.2018 he was authorized to *frame & approve joint time table of routes* with in specified area. Although these instructions were most relevant, but petitioner with-held the same from this court for the reasons best known to him. However, above instructions were made available by the respondents and which read as under:-

*“Office of the State Transport Commissioner, Punjab,
Chandigarh.*

To,

*The Secretary,
Regional Transport Authority,
Patiala, Jalandhar, Ferozepur and Bathinda.*

No. STC-P(P-1)/183539-45 Dated: 05/12/18

Subject:- Regarding framing and approval of joint time tables of the routes/ sections in pursuance of the instructions issued vide letter No. STC-P(P-1)/6128-30 dated 03.03.2003.

-.-

Please refer to the subject cited above.

You are aware that only the erstwhile RTAs namely, Patiala, Jalandhar, Ferozepur and Bathinda were directed to do the work of framing and approving the joint time tables of the routes/ sections within their previous respective jurisdiction with the help of the dealing officials of all other RTAs concerned vide this office order No. 16527 dated 12.03.2018.

Now as decided by the Government, the instructions issued by this office vide letter No. STC-P (P-1)/6128-30 dated 03.03.2003 regarding the framing and approval of joint time tables by the RTAs, a copy of which is enclosed herewith, are hereby reiterated and henceforth it is directed that the joint time tables of the routes/ sections under your respective jurisdiction shall be strictly framed/ approved by the RTAs according to these instructions. Any deviation from these instructions while framing and approving the time tables shall be viewed seriously.

You are hereby directed to complete the whole process within a period of one month positively.

*Sd/-State Transport Commissioner,
Punjab, Chandigarh.”*

A perusal of above extract clearly reveals that “any deviation from these instructions while framing and approving the time tables shall be viewed seriously.”

No doubt, petitioner in para 6 of his draft reply averred that in the light of the instructions dated 05.12.2018, the time table of the routes are being framed and approved by the Secretary, RTAs; but in the very opening of this reply, he submitted that *“there is no provision in Motor Vehicles Act, 1988 for framing of the joint time table of the routes by the Regional Transport Authorities”*. Admittedly, the draft reply was handed over by the petitioner to his official, namely, Dharamjit Singh and upon instruction, learned state counsel submitted *“that there is no provision as per Motor Vehicles Act for framing of joint time-table of the routes”* and the court passed *status quo* order dated 25.01.2019. There are also the allegations against the petitioner that *status quo* order *resulted into undue benefit to the private transporters and the Government had to face an embarrassing situation*. All these allegations are to be proved by the respondents during inquiry proceedings. Thus, at this stage, drawing any conclusion about the factual aspect of the matter either way, would not be appropriate for this court; rather, it is better to leave this arena for the inquiry officer to go ahead and submit a report.

(15) Although learned counsel tried to convince that on account of pendency of the impugned charge sheet, petitioner has been denied induction into All India Services; but it is not acceptable for the reason that he was duly considered by the selection committee for the select list of 2019 ; however his “over-all relative assessment” was found to be “unfit”.

(16) Admittedly, against the adverse remarks, representation of the petitioner was considered and competent authority vide order dated 22.07.2021 has already modified the same as advisory in nature. Thus, a

fair treatment has been accorded to the petitioner and it cannot be said that respondents are bent upon to victimize him; rather they are proceeding in accordance with law and from which they can not be precluded.

(17) This is a matter of record that before issuance of the impugned charge-sheet, petitioner was asked to give his explanation vide communication dated 27.06.2019; but he did not respond within the stipulated period. Ultimately after receiving two successive reminders, he submitted his reply and upon due deliberations, the impugned charge-sheet has been issued; thus it can not be said that the action of competent authority is due to non-application of mind.

(18) Again this is not the case of petitioner that the impugned charge-sheet has been issued in violation of the legal provision(s) or that the authority was not competent to do so under the rules.

(19) Although learned counsel for the petitioner while making reference to the judgment of Hon'ble Supreme Court in **State of Punjab Vs. V.K. Khanna and others, (2001) 2 SCC 330**, vehemently contended that impugned charge-sheet is liable to be quashed; but that is not helpful in any manner. In **V.K. Khanna's case** (supra), the charge-sheet was found to be issued on account of bias attitude of the Chief Minister and reference in this regard can be made to para No.34 of the judgment, which reads as under:-

“34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias— what bias

means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply— is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative—the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.”

On the other hand it is nowhere alleged that the impugned charge-sheet has been issued on account of any bad faith or ill-motive of the competent authority.

(20) Since the enquiry officer has already been appointed in the matter, therefore, it would not be appropriate for this Court to conduct a roving inquiry and examine truthfulness of the allegations levelled against petitioner by way of judicial review.

(21) In view of the facts and circumstances discussed here in above, this court is of the opinion that petitioner has failed to make out a case for

quashing of the impugned charge-sheet dated 12.09.2019 while exercising jurisdiction under Article 226 of the Constitution.

(22) As a result thereof, there is no option except to dismiss the writ petition.

(23) Ordered accordingly.

(24) Keeping in view the nature of controversy involved, the inquiry officer will proceed in the matter expeditiously and after receipt of inquiry report, the competent authority shall take a final decision as per law within next two months, if there is no legal impediment.

(25) The above observations may not be construed as an expression of opinion on the merits of the case, in any manner by either side.

December 14th, 2021
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No