

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 23, 2021

+ W.P.(C) 224/2021, CM No. 589/2021

ABHISHEK YADAV

..... Petitioner

Through: Mr. Tushar Ranjan Mohanty, Adv.

versus

FOOD CORPORATION OF INDIA & ANR.

..... Respondents

Through: Mr. Manoj, SC for FCI with
Ms. Aparna Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the facts and circumstances mentioned herein above and the submissions made, the Petitioner prays that the Hon'ble High Court may be graciously pleased to:

(i) issue rule nisi to the Respondents;

(ii) quash and set aside the Major penalty charge sheet dated 04.08.2020 [Annexure : P-1];

(iii) grant all consequential benefits of the same;

(iv) allow exemplary costs of the present Writ Petition to the Petitioner against the Respondents; and

(v) pass such other and further order/(s) as may be deemed just and appropriate in the facts, circumstances and premises of the present case.”

2. In substance, the petitioner is challenging the charge sheet dated August 04, 2020 issued to him. The charge against the petitioner is the following:

**STATEMENT OF ARTICLE OF CHARGES
FRAMED AGAINST SHRI ABHISHEK YADAV,
GM (G), FCI, ZONAL OFFICE NOIDA**

Article of Charge-I

Shri Abhishek Yadav GM (G) was transferred from MP Region to Zonal Office (East), Kolkata vide Office Order No. 12/2020/E.1 dated 5.2.2020. Zonal Office (West) relieved the officer from West Zone wef 20.2.2020 (A/N) with the direction to report to Executive Director Zone, ZO (East), Kolkata vide Office Order No. 21/2020 dated 19.2.2020.

Shri Abhishek Yadav was placed under suspension vide Order No.E.1/PF-AY/2020/WZ dated 30.3.2020 as he did not report to his new place of posting within the stipulated time.

Subsequently, officer has reported at his new place of posting i.e., Zonal Office (North) on 1.6.2020 and his suspension was revoked vide Order dated 2/3.6.2020.

Shri Abhishek Yadav, GM (G) did not join place of posting after expiry of Joining time and

remained unauthorized absent from duty from 20.2.2020 to 31.5.2020.

By the above act, Shri Abhishek Yadav GM (G) exhibited lack of devotion towards her duty and exhibits gross in-subordination towards lawful orders of the Corporation. Thus, Shri Abhishek Yadav, GM (General) has contravened the FCI (Staff) Regulation 1971, article 32-A (5), (6), (7), (9), (18), (19), (20) (22) & (30).”

3. It is the case of the petitioner and so contended by Mr. Tushar Ranjan Mohanty, learned counsel for the petitioner that the petitioner was transferred from Bhopal to Kolkata vide order dated February 05, 2020 and was relieved from his duties w.e.f. afternoon of February 20, 2020. The petitioner represented against the transfer on humanitarian grounds. On March 03, 2020, while on his way to Kolkata, the petitioner met respondent No.2, who assured the petitioner of sympathetic consideration.

4. According to Mr. Mohanty, the petitioner instead of proceeding to Kolkata, returned to Bhopal. Thereafter, the petitioner was placed under suspension w.e.f. March 30, 2020. The Headquarter of the petitioner was changed from Kolkata to NOIDA vide Order dated May 27, 2020 and the petitioner joined NOIDA on June 01, 2020. Then the suspension of the petitioner was revoked vide order dated June 02/03, 2020. The petitioner was issued a Major Penalty Charge Sheet on August, 04, 2020.

5. According to Mr. Mohanty, the petitioner submitted a complaint against the respondent No.2 in the morning of August

04, 2020 and in retaliation, the respondent No.2 filed a Police Complaint in the evening of the same day. By using his influence and his powerful friends, the respondent No.2 was successful in getting an FIR registered against the petitioner on August 15, 2020 and that too for non-cognizable offences. The petitioner submitted a detailed reply to the major penalty charge sheet. However, without considering the said reply, the Inquiring Authority had been appointed on October 15, 2020. He stated that the respondent No.2 has been inimical towards the petitioner for reasons best known to him and it was the respondent No.2 who had issued the impugned Major Penalty Charge Sheet. The situation took a turn for the worse on July 31, 2020 at 7 O' Clock in the morning, when the petitioner received a call from the respondent No.2 during which the respondent No.2 threatened the petitioner of physical harm. It is in this background, that the complaint was lodged by the petitioner.

6. Mr. Mohanty submits that it is a fit case where charges framed against the petitioner need to be dropped. He also relied upon the orders of the Division Benches of this Court wherein according to him, in similar circumstances, where the employees have been transferred from their place of posting to different places and had not joined the transferred places, were charge sheeted, which were set aside on their submitting an apology and also making voluntary deposit in the AIIMS Poor Fund Account.

7. Mr. Mohanty states that similar procedure can also be resorted to in the case of the petitioner as well.

8. I am not impressed by the submissions made by Mr. Mohanty for the simple reason that the charge against the petitioner is that he did not join the place of posting at Kolkata. The petitioner was transferred to Kolkata on February 05, 2020. He was relieved from Bhopal on February 20, 2020. It is his case that on way to Kolkata, he met the respondent No.2 in Delhi who had assured him of a sympathetic consideration because of which he went back to Bhopal and did not proceed to Kolkata. This aspect has been denied by Mr. Manoj, learned Standing Counsel appearing for the respondent.

9. Till May 27, 2020, there is no order changing his posting from Kolkata. It is only after the change of place of posting to NOIDA, the petitioner joined his duties on June 01, 2020 at NOIDA. The issue is why did he not join the place of posting for almost, three months. The reasons given by the petitioner in his representation are; (1) that there was lockdown in Bhopal and; (2) that his wife was travelling to Brazil, for which he had to take leave. The fact is the petitioner holding a high post of General Manager, was neither on the rolls of Bhopal nor of Kolkata. Was he absent unauthorizedly? The Inquiry Officer has been appointed so also the Presenting Officer. The petitioner has also appointed his defence assistant. The petitioner has also participated in the proceedings before the Inquiry Officer. The charge framed against the petitioner shall be decided by the Inquiry Officer based on the evidence to be produced by the Charged Officer as well as the Presenting Officer. This Court is

of the view that in the facts of this case, the Court should not interdict the proceedings initiated against the petitioner.

10. A plea is advanced by Mr. Mohanty, that the issuance of chargesheet is actuated by *mala fide* on the part of the respondent No.2. In this regard he has referred to a complaint filed against respondent No.2 by the petitioner. Suffice to state, no such case has been set up by the petitioner on facts, in his reply to the chargesheet. His only case is of malice in law, that too by stating that the chargesheet has been issued by not following the rules and instructions. No doubt, the petitioner did say that there is also malice in fact, but he did not elaborate the same in the manner he has done in the petition. The plea of *mala fide* clearly appears to be an afterthought. That apart, though the respondent No.2 has retired, the new disciplinary authority is pursuing the chargesheet.

11. Regarding the reliance placed by Mr. Mohanty on the orders passed by the Division Bench of this Court, the same are on different factual situations inasmuch as in the said cases, the petitioners were working as Statistical Officers and who have some explanation for not joining the places of transfer for personal reasons and illness. The reasons given by the petitioner for not joining the place of posting have already been stated above. The justifiability of reasons have to be gone into by the Inquiry Officer / Disciplinary Authority. It is not for the Court to consider the relative merit of the stand of the parties and come to a conclusion.

12. In this regard I may refer to the Judgment of the Supreme Court in the case of ***Union of India and Ors. v. Upendra Singh*** **1994 (3) SCC 357** wherein the Supreme Court has held as under:

“6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons [1992 Supp (2) SCC 312]. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus: (SCC p. 317, para 8)

“Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide,

a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.”

(emphasis supplied)

The writ petition filed by the petitioner is dismissed. It is made clear, that my above conclusion must not be construed as determination on the merit of the charge framed against the Petitioner.

CM No. 589/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 23, 2021/aky/jg