

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.17338 of 2017(O&M)

Reserved on:24.01.2023

Date of Decision.10.02.2023

Devender Singh Malik

...Petitioner

Vs

Haryana Power Generation Corporation Ltd. and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Shalender Mohan, Advocate
for the petitioner.

Mr. R.D. Bawa, Advocate
Mr. Samuel Gill, Advocate and
Mr. DipanshuKapur, Advocate
for respondents No.1 and 2.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari, quashing suspension order dated 25.02.2016 (Annexure P-6), enquiry report dated 05.12.2016 (Annexure P-7) and show cause notice dated 28.06.2017 (Annexure P-8) on the ground that the departmental enquiry had been conducted by the respondent-authorities behind the back of the petitioner and no chargesheet was issued to him, much less, no opportunity of hearing was granted.

2. In brief, the facts as enumerated in the writ petition are that the petitioner, being retired from the Indian Air Force as Technician on 30.09.2003, applied for the post of Assistant Engineer in Electrical/Mechanical Engineering in the Haryana Power Generation Corporation Ltd. and was duly selected. The petitioner joined the respondent-Department on 04.04.2005, however, services

of the petitioner stood terminated on 17.10.2006 without granting any opportunity of hearing and without issuing any charge sheet. Aggrieved against the said action of the respondent-Department, the petitioner had approached this Court by way of filing CWP No.17974 of 2006 and vide order dated 10.01.2008, this Court set aside the termination of the petitioner. The respondent-Department challenged order dated 10.01.2008 before the Hon'ble Supreme Court by filing Civil Appeal No.591 of 2009 but the same was dismissed on 07.05.2015. Resultantly, the petitioner was allowed to join services vide order dated 29.10.2015 and he joined duty on 04.11.2015 in the office of CE/RGTPP, HPGCL, Hisar. The respondent-Department vide order dated 29.10.2015 itself also considered his probation period deemed to be completed. However, on 25.02.2016, petitioner was again suspended without issuing any charge sheet. Even regular departmental enquiry was conducted at the back of the petitioner and he was issued show cause notice dated 28.06.2017 for imposition of penalty of dismissal from service. Aggrieved against the aforesaid action of the respondent-Department, petitioner approached this Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner would contend that the respondent-Department had conducted departmental enquiry without issuing charge sheet to him. The charge sheet was alleged to be served upon the petitioner on 13.06.2016 i.e. after more than 3 ½ months whereas as per the instructions of the Government of Haryana dated 19.02.1982, the delinquent employee is required to be served with charge sheet within 15 days from the date of taking a formal decision to start formal proceedings. The petitioner was suspended on 25.02.2016 and therefore, charge-sheet ought to have been issued to him within 15 days therefrom. It is argued that entire proceedings are vitiated

as in the absence of charge sheet, he was unable to put forth his defence. The respondent-Department conducted the enquiry at the back of the petitioner and issued him show cause notice dated 28.06.2017 of proposed punishment, which is liable to be set aside being illegal, arbitrary and against the principles of natural justice. He relied upon the judgment rendered by the Hon'ble Supreme Court in *Ajay Kumar Choudhary Vs. Union of India through its Secretary and another* (2015) 7 SCC 291 to contend that currency of suspension order ought not to extend beyond three months, if within this period memorandum of charges/charge sheet is not served on the delinquent officer/employee and if the charge sheet is served, a reasoned order must be passed for the extension of the suspension. It is argued that the petitioner was alleged to be served with a charge sheet on 13.06.2016 i.e. after a period of three months from the date of suspension i.e. 25.02.2016 and therefore, the suspension of the petitioner ought to have been recalled, which has not been done.

4. Per contra, learned counsel appearing for the respondents would argue that at the time of joining duties pursuant to judgments passed by this Court and the Hon'ble Supreme Court of India, petitioner furnished an affidavit attested by the Executive Magistrate that he has not been involved in any criminal activity nor any criminal proceeding/case is pending against him in any police station or court and that he has not remained in police custody from 17.10.2006 till date i.e. 23.10.2015. It was also stated in the said affidavit that the petitioner has not been involved or convicted for any offence involving moral turpitude during the period from 17.10.2006 till date i.e. 23.10.2015. However, on verification of character and antecedents of the petitioner, it came forth that three FIRs i.e. FIR No.480 dated 20.12.2014 under Section 379 IPC registered at Police Station Sampla, District Rohtak; FIR No.147 dated

16.02.2015 under Sections 395, 378, 379 IPC registered at Police Station Sadar Sonipat, District Sonipat and FIR No.07 dated 08.01.2015 under Sections 379, 395, 120B IPC registered at Police Station F. Nagar, Gurgaon, stood registered against the petitioner and he remained in police custody from 18.03.2015 to 21.08.2015. Therefore, the petitioner deliberately concealed the factum of registration of aforesaid FIRs against him besides the fact that he remained in police custody from 18.03.2015 to 21.08.2015 and in this background, charge sheet was issued to the petitioner on 13.06.2016, which was returned to CE/Admn., HPGCL with remarks that petitioner refused to receive the documents. Again attempt was made by the Chief Engineer, Projects, HPGCL, Panchkula to deliver charge sheet to the petitioner on 17.06.2016, however, he again refused to accept the documents. Charge sheet sent through speed post dated 17.06.2016 on residential address of the petitioner was also returned as undelivered on 23.06.2016. On 22.06.2016, again the charge sheet was returned with remarks that *the charged officer, Sh. Devender Singh, AE (under suspension) refused in writing to accept the documents.* It is further contended that petitioner requested for personal hearing, which was accorded to him on 22.06.2016 in the chamber of Director Technical, HPGCL, Panchkula and during the personal hearing, an attempt was made to hand over charge sheet to the petitioner but he deliberately refused to receive the same. The said conduct of the petitioner is also recorded in the minutes of meeting of personal hearing, which was conveyed to the petitioner vide memo dated 12.07.2016. On 13.06.2016, again charge sheet was sent at the residence of the petitioner through special messenger, which has duly been received by his wife namely Smt. Kanta. The petitioner did not submit any reply to the charge sheet nor did he attend any proceedings fixed for 02.10.2016, 03.11.2016, 15.11.2016 and

02.12.2016. Despite being given sufficient opportunities to the petitioner to defend his case, he neither appeared to defend his case nor submitted any reply or documents in his defence. The enquiry officer concluded the enquiry and submitted his report dated 05.12.2016 wherein charges against the petitioner stood proved and therefore, show cause notice was issued to the petitioner proposing major penalty of dismissal from service. It is argued that there was no delay on the part of the respondent-Department in serving charge sheet to the petitioner whereas it was the petitioner himself, who refused to receive the charge sheet.

5. It was further argued on behalf of the respondents that the petitioner is habitual of making false statements and producing false/fake documents. He had filed COCP No.3069 of 2017 on the ground of wilful disobedience of order passed by the Hon'ble Supreme Court. However, this Court vide order dated 09.04.2019 observed that the said order is a fabricated one. Faced with the said situation, petitioner sought time to file an affidavit explaining the authenticity of the document in question, however, on the next date of hearing, petitioner did not appear in the contempt petition, despite it being passed over twice and ultimately the same was dismissed for non-prosecution. Therefore, the instant writ petition is liable to be dismissed being devoid of merit.

6. I have heard learned counsel for the parties and have perused the paper book. The only point for consideration before this Court is whether delay of 3 ½ months in issuing the charge sheet, would vitiate the entire enquiry proceedings. The petitioner was put under suspension on 25.02.2016 and the charge-sheet was issued/served to him on 13.06.2016 i.e. after about 3 ½ months. Delay in issuing charge sheet does not vitiate whole enquiry proceedings straightaway. There is no straightjacket formula and every case has

to be considered on its own facts. Courts while dealing with issue of delay in issuing charge sheet have to take into consideration the factors viz; length of delay, how delay prejudiced the delinquent employee, gravity of charges and whether the delay has been properly and reasonably explained by the disciplinary authority. The purpose of issuing charge sheet within a reasonable time to the delinquent employee is that the disciplinary proceedings can be concluded expeditiously. **In State of A.P. v. N. Radhakishan, (1998) 4 SCC 154**, the Supreme Court, while dealing with a challenge to the order passed by the Central Administrative Tribunal quashing the proceedings of enquiry on the ground of delay, laid down the following general proposition of law.

“It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when they are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on that account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle

of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse consideration.”

7. In the case at hand, attempts were made to deliver charge sheet to the petitioner on 13.06.2016 and 17.06.2016 but the petitioner refused to accept the documents. Charge sheet sent through speed post at the residence of the petitioner also returned back undelivered on 23.06.2016. On 22.06.2016 also, petitioner refused in writing to accept documents. Even during personal hearing on 22.06.2016, an attempt was made to hand over charge sheet to him but the petitioner refused to receive the same. Therefore, it is not the case that charge-sheet was not issued to him at all or that an enquiry was held in his absence. It is settled proposition of law that no doubt every endeavor has to be made to have the charge sheet served on the delinquent, but if the delinquent evades receipt of it, then he cannot be allowed to take advantage of such evasion. Putting it in transmission within the period is sufficient compliance. The disciplinary authority had made efforts to issue charge sheet to the petitioner but the petitioner himself evaded receipt of the same. Despite knowing the fact that departmental proceedings had been initiated against him and he was called to attend proceedings on 02.10.2016, 03.11.2016, 15.11.2016 and 02.12.2016, petitioner did not even make any representation to the enquiry officer to give him a copy of charge sheet so that he may be able to defend his case. The

petitioner cannot take advantage of his own conduct where he did not make any effort to get copy of the charge sheet, rather evaded receipt of the same. It is in this background, the enquiry officer continued with proceedings and submitted his report, on the basis of which, show cause notice has been issued to the petitioner.

8. It is settled position of law that a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. The Hon'ble Supreme Court in **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha (2012) 11 SCC 565** has 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/competent 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 Ghose [(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. The petitioner herein has miserably failed to establish that delay of 3 ½ months in issuing charge sheet to the petitioner prejudiced him in any manner. Rather, the petitioner himself evaded receipt of the charge sheet on numerous occasions. Eventually the charge sheet was delivered upon him through his wife. The argument raised by the counsel for the petitioner that he was not given opportunity to defend himself also, pales into insignificance, as he was called to join the departmental proceedings on 02.10.2016, 03.11.2016, 15.11.2016 and 02.12.2016 but he chose not to join.

10. In view of the aforesaid facts and circumstances and keeping in view the gravity of charges, delay explained by the respondent-department in issuing the charge sheet and the conduct of the petitioner himself, this Court does not find any merit in the prayer sought by the petitioner. Consequently, the instant petition stands dismissed. The petitioner is at liberty to reply to the show

cause notice, if he so desires, within a period of two weeks from the date of receipt of certified copy of this order, upon which the respondent-department will pass appropriate speaking order in accordance with law.

February 10, 2023

Pankaj*

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No