



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 18, 2023

+ W.P.(C) 1546/2022

SHRI GAUTAM ARORA

..... Petitioner

Through: Mr. Sanjeev Ralli, Sr. Adv. with
Mr. Shubham Yadav and Mr. Ravi
Kant Yadav, Advs.

versus

GOVT. OF NCT DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC with
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Palak Rohmetra,
Ms. Laavanya Kaushik and
Ms. Aliza Alam, Advs. for GNCTD
Mr. Sidhant Kumar, Ms. Vidhi
Udayshankar, Ms. Manyaa Chandok,
Ms. Muskaan Gopal, Mr. Gurpreet
Singh and Mr. Shivankar Rao, Advs.
for R-3 & R-4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner challenging the order dated September 18, 2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in the Original Application being OA No.4189/2017 ('OA', for short)



whereby the Tribunal has partially allowed the OA and set aside the charge memo dated April 16, 2014 issued to the petitioner with a further direction that the communication dated September 22, 2017 of the Election Commission of India ('Election Commission', for short) shall be treated as the one recommending the disciplinary action against the petitioner herein.

2. The brief facts relevant for the decision of the petition are that the petitioner is working as an Administrative Officer in DDU Hospital under the Govt. of NCT of Delhi, Hari Nagar, New Delhi. On April, 2013, he was posted on deemed deputation with respondent No.3, Election Commission as AERO, Vikas Puri (AC-31), New Delhi and was put on the strength of the respondent No.4, i.e., Chief Electoral Officer, Delhi. He continued to work on the said position till the middle of March, 2014. Thereafter, he continued to work as Electoral Registration Officer till July 2016 on deemed deputation.

3. It was the case of the petitioner before the Tribunal that, he joined as AERO in April, 2013 and the schedule of Special Summary Revision of Electoral Rolls having January 1, 2013 as the qualifying date was announced from October 15, 2012 to January 10, 2013. The exercise of distribution of election identity cards prepared on the basis of the summary revision of 2012, was completed in the month of June, 2013.

4. According to the petitioner during the Summary Electoral Roll Revision, one Manvinder Singh was appointed as AERO, AC-31, Vikas Puri, New Delhi, whereas Sh. Ajay Rawal was posted as ERO of the same area till October 15, 2012 followed by Ajay Sharma,



ERO, whereafter Smt. Manju Singh Kalshian joined as ERO of the same AC in place of Ajay Rawal on December 18, 2012. Manvinder Singh continued as AERO till April, 2013 when the petitioner replaced him in the said capacity. Besides the above Officer, one Satpal was working in the voter centre, AC-31, Vikas Puri, New Delhi as LDC and one Dolly Sharma was the head clerk who has since expired.

5. On July 17, 2013, a complaint was made by the then MLA against Satpal regarding his indulgence in activities prejudicial to the voter centre. Satpal was surrendered by the then ERO of AC-31, Vikas Puri, New Delhi, Manju Singh Kalshian.

6. On September 26, 2013 an intimation was received from the then SDM, Dwarka by District Election Officer, District West about a complaint through mobile message about the mutilated Election Photo Identity Cards ('EPICs', for short) found lying on the roadside in Sector-13 Dwarka. On receipt of the above report from SDM, Dwarka, an FIR was registered with the Dwarka (North) Police Station. It was his case that investigation was carried out in the matter, during which it was informed that the torn EPICs found in Sector-13, Dwarka were related to special summary revision held in 2012 when Manvinder Singh was posted as AERO. A comprehensive report was submitted to the then District Election Officer of respondent No.4, wherein Satpal was named as key official responsible for the aforesaid episode and it transpired into the suspension of Manvinder Singh.

7. On April 16, 2014, petitioner received a memorandum issued under the order and in the name of respondent No.2 for major penalty



proceedings with Articles of Charge containing two charges against the petitioner. The charges against the petitioner were relating to the incident of mutilated EPICs found on the roadside in Dwarka on September 26, 2013 and 46 undistributed EPICs relating to summary revision of 2012 found at the voter centre, AC-31, Vikas Puri, New Delhi.

8. It was the case of the petitioner that the above charges relating to the period during which he was not working in respondent Nos. 3 and 4 as the EPICs in the question pertain to the summary revision of 2012. The charges framed against the petitioner vide memorandum dated April 16, 2014, became a subject matter of the OA along with letter dated September 22, 2017, which is a letter from Election Commission to the Chief Electoral Officer, respondent No.4, duly stating that the Commission had considered the matter and directed the vigilance of respondent No.1, Govt. of NCT of Delhi to proceed with the disciplinary action against all officials involved including the petitioner.

9. An issue arose in the OA that, in terms of the judgment of the Supreme Court and the guidelines issued, it is clear that the Election Commission shall have the power to suspend the official / officer or police official and even can substitute such official with another. In case, it becomes necessary that the disciplinary proceedings are to be initiated against such an employee, the recommendation has to be made to the parent department. It was held by the Tribunal that, in the instant case, respondent No.2, the disciplinary authority did not receive any recommendation from the respondent No.3, Election



Commission before issuing the impugned chargesheet dated April 16, 2014. It was in that context, the Tribunal noting the fact that a letter dated September 22, 2017 was issued by the Election Commission that it gave the directions which we have already referred to above.

10. It may be stated here that the said order of the Tribunal became a subject matter of a challenge before this Court in a writ petition being W.P.(C) 1702/2020, which was disposed of on February 14, 2020 by the Coordinate Bench of this Court by stating as under:

“Challenge in this petition is to the judgment dated 18.09.2019 passed by Central Administrative Tribunal (‘Tribunal’).

Mr. Sanjeev Ralli, learned counsel appearing for the petitioner submits that the communication dated 22.09.2017 issued by Election Commission of India is liable to be quashed which recommends that fresh disciplinary proceedings be initiated against the petitioner on the same charge which has been quashed by the Tribunal in the judgment dated 18.09.2019.

After some hearing, learned counsel for the petitioner wishes to withdraw this petition with liberty to seek such remedy as available to him in accordance with law at the appropriate stage in case a charge-sheet is framed against the petitioner.

Accordingly, the writ petition and CM APPL. 5874/2020 are dismissed as withdrawn. Liberty as prayed for is granted to the petitioner.”

11. It is a conceded position that pursuant thereto, a fresh chargesheet dated December 30, 2021 has been issued to the petitioner.

12. The submission of Mr. Siddhant Kumar and Mr. N.K. Singh, at the outset is that, pursuant to the directions of the Tribunal, a



chargesheet dated December 30, 2021 has been issued, any challenge to the same cannot be the subject matter of this writ petition. In fact, they have also stated that the challenge against the order dated September 18, 2019 of the Tribunal and also in respect of a communication dated September 22, 2017, is clearly unsustainable for the reason that the said orders were subject matter of the OA decided by the Tribunal and the order of the Tribunal was challenged before this Court. This Court did not interfere with the judgment and the communication. It had not granted any liberty to challenge the order dated September 18, 2019 by way of a fresh writ petition; as such the present petition is not maintainable.

13. On this submission of Mr. Kumar and Mr. Singh, Mr. Sanjeev Ralli, learned Sr. Counsel appearing for the petitioner submitted that the reading of the order of this Court dated February 14, 2020 by the learned counsel for the respondents is clearly untenable, inasmuch this Court in the said order has allowed the petitioner to withdraw the petition with liberty to seek a remedy as available to him at the proper stage, that is, in case a chargesheet is issued to the petitioner.

14. He stated that, since the chargesheet has been issued, the petitioner can approach this Court challenging the order of the Tribunal, communication dated September 18, 2019 and also the chargesheet dated December 30, 2021, which has been issued. He also submitted, that in view of the finding of the Tribunal, whereby the Tribunal has directed that the communication dated September 22, 2017 from the Election Commission to be treated as a recommendation for disciplinary action against the petitioner, which



resulted in the issuance of chargesheet dated December 30, 2021, the challenge to the said chargesheet, shall not be maintainable before the Tribunal as the chargesheet was issued in terms of the directions of the Tribunal and the Tribunal would not sit over its own direction to quash the chargesheet dated December 30, 2021 and hence the petitioner has no other remedy but to approach this Court challenging the order of the Tribunal dated September 18, 2019 as well as the chargesheet dated December 30, 2021.

15. That apart, he submitted that the disciplinary authority while issuing the chargesheet dated December 30, 2021 has not applied its mind inasmuch there is enough material on record which would prove that the petitioner is nowhere concerned with the mutilated EPICs found on the roadside of Dwarka on September 26, 2013 and 46 undistributed EPICs relating to summary revision of 2012 found at the voter centre, AC-31, Vikas Puri, New Delhi.

16. That apart, he submitted that the learned Tribunal did not consider or discuss the contentions and pleas raised by the petitioner against Election Commission's communication dated September 22, 2017. No reasons have been given by the Tribunal while erroneously holding that the above communication shall be treated as recommendations for initiating a fresh disciplinary action against the petitioner. He also stated that the communication dated September 22, 2017 does not constitute the recommendations which is mandatory and a pre-condition under Section 13 CC of Representation of the People Act, 1951 read with OM dated November 7, 2020 before initiating the disciplinary action. The communication does not contain



any reason or make reference to any material based on which the same was issued by Election Commission after more than 3 years from the date of charge sheet dated April 16, 2014 which was quashed by the Tribunal vide impugned the impugned order dated September 18, 2019.

17. He submitted that there was no material at all before the Election Commission to justify the issuance of impugned letter dated September 22, 2017, as the same was without any application of mind and contrary to the report of District Election Officer dated September 29, 2013, which did not implicate the petitioner at all. Mr. Ralli has relied upon the following judgments in support of his case:

1. *Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta* (1972) 3 SCC 234
2. *Commissioner of Police Bombay v. Gordhandas Bhanji*, 1951 SCC Online SC 70
3. *Mansukhlal Vithaldas Chauhan v. State of Gujarat* (1997) 7 SCC 622
4. *Vinod Kumar v. State of Haryana and Ors.* (2014) 3 SCC 203
5. *Usha Stud and Agricultural Farms Pvt. Ltd. and Ors. v. State of Haryana and Ors.* (2013) 4 SCC 210
6. *Amarendra Kumar Pandey v. Union of India and Ors.* 2022 SCC OnLine SC 881
7. *Shailender Parihar v. Sarmad Hafeez, Secretary Youth Services & Sports Department and Ors.* 2022 SCC OnLine J & K 852

18. On the other hand, Mr. Siddhant Kumar and Mr. N.K. Singh



have also stated that the attempt of Mr. Ralli to contest the charges framed against the petitioner on merits cannot be the subject matter of this writ petition. Mr. Kumar stated the Election Commission has filed an affidavit on record stating that the communication dated September 22, 2017, is a valid communication of the Commission and the same is not liable to be set aside.

19. According to him, the charges framed against the petitioner are being validly framed and the same shall be decided by the Inquiry Officer. He also stated that, it is not a case of the petitioner that the charges have been issued with malafide intention or the authority which has issued chargesheet did not have the jurisdiction. Given the scope of judicial review, the present petition is liable to be dismissed.

20. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the present petition challenging the order dated September 18, 2019, communication dated September 22, 2017 and chargesheet dated December 30, 2021 is unsustainable.

21. At the outset, we may state that, during the course of hearing, it was put to Mr. Ralli, whether the petitioner intends to challenge the chargesheet which has been issued, pursuant to the directions given by the Tribunal, as the same is a fresh cause of action, the answer of Mr. Ralli was in the negative. Noting the same, we proceed to decide the writ petition itself.

22. We agree with the submissions made by Mr. Kumar and Mr. Singh that, in view of the order passed by this Court, the subject matter of the impugned order passed by the Tribunal dated September



18, 2019, was also the subject matter of a writ petition before this court being W.P.(C) 1702/2020, which was decided on February 14, 2020.

23. We have already reproduced the order as passed by the Tribunal. On a reading of the same, it is clear that the Tribunal did not interfere with the order passed by this Court. Further, this Court has not granted any liberty to the petitioner to file a fresh petition, if a chargesheet as directed by the Tribunal is issued. In fact, a reading of the order would reveal that the petitioner shall have a remedy if a chargesheet is issued to him. The petitioner should have availed the remedy against the chargesheet which has been issued to him in accordance with law.

24. Since on a specific query to Mr. Ralli, whether the petitioner intends to approach the Tribunal challenging the chargesheet, his answer being in the negative, we have no hesitation to say that the challenge to the order dated September 18, 2019 and communication dated September 22, 2017 of the Election Commission is clearly unsustainable in the present proceedings.

25. In so far as the challenge to the chargesheet dated December 30, 2021 is concerned, the same cannot be challenged by the petitioner before this Court in the absence of any ground that the chargesheet has been issued with malafide intention or by an officer, who was not competent to issue. This we say so, in view of the judgment of the Supreme Court in the case of *Union of India v. Upendra Singh, (1994) 3 SCC 357* wherein it is held that:

“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, Kamal v. Gopi Nath & Sons⁵. 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 authorized 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)

26. Further in the case of ***State of Orissa & Anr. v. Sangram Keshari Mishra and Anr., Civil Appeal Nos. 8509-8510/2003***, the Supreme Court held that:

"9. The learned counsel for first respondent would further argue that the charge memorandum ought to have been quashed not only on a technical ground but even on merits without reserving any liberty to the State Government to proceed in accordance with law. He submitted that the following circumstances would make it clear that the said charge memorandum was mala fide and issued with ulterior motive to affect his career as a senior IAS officer: (a) The copy of the High Court order could be obtained by applying for a certified copy, and there was no need for any one, much less for him, to impersonate any one else to get a certified copy, (b) It is difficult to believe that an officer of a rank of Special Secretary would personally go to the office of an Additional Govt. Advocate just to receive a certified copy; (c) The first respondent was in no way concerned with either Misc. Case No. 238 of 2001 or Misc. Case No.236/2001 on the file of the High Court and he had nothing to do with the order dated 17.1.2002 therein. Receiving a free copy of the said order would not in any way benefit him or adversely affect anyone else; (d) The charge against him is so absurd and preposterous that it is liable to be rejected outright, and (e) The background facts would disclose the hand of one P.K. Nayak, IAS, who is inimically disposed towards the first respondent. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as 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. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority. (vide Union of India vs. Upendra Singh - 1994(3) SCC page 357).



Therefore we reject the contention that the charge to have been quashed without reserving to the State to proceed in accordance with law.

(emphasis supplied)

27. Insofar as the plea of Mr. Ralli, that the charges which have been framed on December 30, 2021 are unsustainable in view of the communications / documents on record is concerned, we refrain ourselves from saying anything on the said submission as the veracity of the charges which have been framed against the petitioner are necessarily to be looked into by the Inquiry Officer as the stand of the Election Commission is the following:

“10. The Answering Respondent No.3 based on the District Election Officer (West) report and the communication issued by the Answering Respondent No.4 by communication dated 22.09.2017 recommended that Respondent No.1 proceed with disciplinary proceedings against the Petitioner.

11. That the ground urged by the Petitioner that the Ld. Tribunal erred in treating the communication dated 22.9.2017 as recommending disciplinary proceedings in the absence of the Answering Respondent No.3's stand being on record is obviated by the averments set out above. It is therefore clear that the communication dated 22.9.2017 is a valid recommendation for the initiation of disciplinary proceedings against the Petitioner.”

28. Mr. Ralli has placed reliance on the judgments for the following propositions:

- a. In *Sheo Nath Singh (supra)*, the issue before the Supreme Court was with regard to the “Reason to believe” under Section 34(1-A) of the Income Tax, 1922 and material or



fact which has been stated in the reasons for starting proceedings. The Court held that the reasons stated in the facts of the case are stated to be believes and leads to an obvious self contradiction as well as the requirements under Section 34(1-A) were not satisfied, hence, the appeal was allowed. The said judgment is distinguishable in the facts and in law.

- b. In ***Commissioner of Police (supra)***, wherein the issue before the Supreme Court was that whether an order can be issued under Section 45 of the Specific Relief Act against the appellate, the Commissioner of Police, Bombay. The said case is with regard to exercise of discretion by the Commissioner. The said judgment is distinguishable in facts and law, inasmuch as there is no dispute with regard to the authority of Election Commission to recommend disciplinary action / disciplinary proceedings.
- c. In ***Mansukhlal Vithaldas Chauhan (supra)***, the fact of the case was that the High Court of Gujarat issued a direction to the Secretary to grant sanction. The Court held that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. In the case in hand, there is no dispute with regard to the jurisdiction of the



sanctioning authority.

- d. In *Vinod Kumar (supra) & Usha Stud and Agricultural Farms Pvt. Ltd. and Ors. (supra)* the issue before the Supreme Court was with regard to principle of natural justice under Section 5-A(2), the duty to give reasons / recording of reasons / speaking order. The said judgment is distinguishable in facts and in law.
- e. In *Amarendra Kumar Pandey (supra)*, the issue before the Supreme Court was with regard to dismissal of petitioner therein from the service under Assam Rifles Act, 1941. The Court stated that where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority concerned, by some such expression as 'is satisfied' or 'is of the opinion' or 'if it has reason to believe' or 'if it considered necessary', the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed. The said judgment is distinguishable on facts, inasmuch the disciplinary authority has itself formed an opinion after evaluation of the available material or evidence.
- f. In *Shailender Parihar (supra)*, the issue before the High



Court of Jammu & Kashmir and Ladakh, was with regard to late joining for duty. The candidate, instead of joining the duties within 21 days joined the duty on the 26th day from the day next to the date of issuance of engagement order. The respondent issued an order cancelling his engagement. The Court held that the respondent No.2 acted with the mechanical mindset, least sensitive to the factual and legal situation of the case and set aside the cancellation in view of non-application of mind and violative of *audi alteram partem*. The said judgment is distinguishable on facts and law.

29. In view of our above discussion, we are of the view that the petition is not maintainable in so far as the challenge to the order dated September 18, 2019 and communication dated September 22, 2017. The challenge to the chargesheet dated December 30, 2017 shall also be unsustainable in view of the law laid down by the Supreme Court.

30. The petition is dismissed. No costs.

31. It is clarified that the aforesaid must not be construed as our expression on the merit of the charges framed against the petitioner.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 18, 2023/jg