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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 4th September, 2023

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W.P.(C) 5254/2021 & C.M. APPL. 16142-43/2021

SUNIL KUMAR CHAUDHARY

..... Petitioner

Through: Mr. Shankar Raju, Mr. Tushar Ranjan Mohanty, Mr. Nilansh Gaur, Mr. Rajesh Sachdeva and Ms. Payal Mohanty, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Vineet Dhanda, Central Government Standing Counsel with Mr. Syed Husain and Mr. Tanishq Srivastava, Advocates for UOI/R-1.

Mr. Soumyajit Pani and Mr. Aishwary Bajpai, Advocates for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. Present writ petition has been filed by the Petitioner seeking quashing of the impugned major penalty charge sheet dated 30.04.2021 with all consequential benefits.

2. Factual matrix to the extent relevant for adjudication of the issues arising in the present writ petition is that Petitioner was appointed as Assistant Manager in IRCON International Limited (hereinafter referred to as 'IRCON') and joined the post on 01.12.1983. In March, 2006, Petitioner was selected as Executive

Director of Housing and Urban Development Corporation Limited



(‘HUDCO’) and joined in the same month. Thereafter, Petitioner was selected by the Public Enterprises Selection Board as Director (Projects) in National Buildings Construction Corporation (India) Limited (hereinafter referred to as ‘NBCC’) and joined NBCC on 13.11.2013. On selection by the PESB, Petitioner joined as Chairman-cum-Managing Director of IRCON on 28.10.2016 and worked there till 30.04.2021, the date of his superannuation on attaining the age of 60 years.

3. As the facts unfold, on 30.12.2020, Ministry of Housing and Urban Affairs Development (hereinafter referred to as ‘MOHUA’) issued a show-cause notice to the Petitioner seeking explanation for alleged lapses in the year 2014, when the Petitioner was serving as Director (Projects) with NBCC. Petitioner submitted a reply dated 30.01.2021, responding to the allegations in the show-cause notice.

4. No further action was taken on the said show cause notice until 30.04.2021, the date of superannuation of the Petitioner, when a major penalty charge sheet was served upon him under Rule 8 of *National Buildings Construction Company (Discipline & Appeal) Rules, 1993* (hereinafter referred to as ‘NBCC Rules 1993’), wherein allegations were levelled in relation to the work of “Construction of Group Housing Residential Apartments namely NBCC Green View at Sector 37-D Gurgaon, Haryana”, for the year 2014-15. It is this charge sheet which is impugned in the present petition.

5. Learned counsel for the Petitioner assails the major penalty charge sheet on several grounds as follows:-

- (a) Charge sheet is issued without jurisdiction and deserves to be quashed on this ground alone. It is trite that Courts



should ordinarily not interfere at the stage of charge sheet while exercising the power of judicial review under Article 226 of the Constitution of India, however, there are exceptions to this Rule and one of them is where the charge sheet is without jurisdiction, not having been issued by the Competent Authority. [*Ref.: Union of India and Others v. Upendra Singh, (1994) 3 SCC 357 and Benedict Denis Kinny v. Tullip Brian Miranda and Others, (2021) 12 SCC 780*].

- (b) As per Government of India (Allocation of Business) Rules, 1961, business of Government of India is transacted by Ministries, Departments, Secretariats and Offices specified in the First Schedule to the Rules and no Ministry can transact business allocated to another Ministry. MOHUA is at Entry No. 40 while Ministry of Railways is at Entry No. 28 and the latter cannot deal with disciplinary matters pertaining to NBCC, which for all purposes comes under the administrative control of the former. The allegations pertain to alleged violation of NBCC Service (Conduct) Rules, 1969 and charge sheet if at all could have been issued under NBCC Rules 1993 but only by MOHUA. Therefore, the impugned charge sheet issued by Ministry of Railways suffers from patent illegality of lack of jurisdiction and is *non-est*.
- (c) Impugned charge sheet was issued at around 5:32 p.m. on the date of retirement of the Petitioner from IRCON, by Ministry of Railways for the alleged misconduct



committed by the Petitioner while serving in NBCC under MOHUA, which was legally impermissible. IRCON has its own Rules for disciplinary proceedings called the '*IRCON Conduct, Discipline and Appeal Rules, 1981*' (hereinafter referred to as '*IRCON Rules 1981*'). Rule 3(a) of the said Rules defines an 'employee' as a person in the employment of the company and 'misconduct' is defined in Rule 5 as acts of commission and omission committed during the employment in IRCON by an employee. Rule 23 provides penalties that can be imposed on an 'employee' and Rule 25 provides procedure for imposing major penalties on an 'employee'. Undisputedly, the alleged misconduct relates to the year 2014 when Petitioner was an employee of NBCC and thus Ministry of Railways has no power and jurisdiction to issue a charge sheet pertaining to a period when Petitioner was not in employment of IRCON.

- (d) Rule 27A of IRCON Rules 1981 provides that any disciplinary proceedings instituted against an employee, while he was in service, whether before his retirement or during his re-employment, shall after final retirement of the employee be continued and concluded by the authority by which they were commenced as if the employee had continued in service until the proceedings are concluded and final order is passed. Since Petitioner was not in service of IRCON during 2014, charge sheet could not have been issued for the said period, question



of continuing the disciplinary proceedings under IRCON Rules 1981, post retirement of the Petitioner does not arise.

- (e) Petitioner was relieved by NBCC on 28.10.2016 and his name was struck off from the rolls of NBCC from the said date. Petitioner relinquished all relations with NBCC on this date and was paid complete terminal dues on 05.01.2017. Under unamended NBCC Rules 1993, as they stood in 2014, the year of the alleged misconduct, employees who had superannuated or separated from the organization could not be subjected to disciplinary proceedings and only proceedings which were instituted while the employee was in service, could continue post retirement by virtue of Rule 8(20) of NBCC Rules 1993. Rule 2(g) of NBCC Rules 1993 defines “employee” to mean an employee in the regular establishment of the Corporation. Further, Rule 3 provides that the Rules shall apply to every employee borne on the regular establishment of the Corporation. Thus, there was no provision under the unamended Rules which empowered NBCC to charge sheet an employee after retirement or separation i.e. post severance of employer-employee relationship. Rule 8(20) was amended in the year 2017 incorporating a provision enabling the Disciplinary Authority to charge sheet superannuated/separated employees. Rule 8(20)(i)(a) provides that an employee who has superannuated/separated from the Company



shall be deemed to be an employee for disciplinary action for any misconduct committed by him during his service in the company. Rule 8(20)(i)(b)(1) read with Rule 8(20)(i)(b)(2) provide that disciplinary proceedings against superannuated/separated employee shall not be instituted without the sanction of the Board of Directors in case of an employee below the Board level and of the Administrative Ministry in case of a Board level employee and shall not be in respect of an event which took place not more than four years before such institution. Therefore, in the absence of any provision empowering NBCC to initiate disciplinary proceedings against the Petitioner in 2016, post cessation of employer-employee relationship, no action could be taken by NBCC and conscious of this position, charge sheet was never issued by the Disciplinary Authority under the NBCC Rules 1993. In *State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another, (2013) 12 SCC 210*, the Supreme Court held that gratuity and pension are not bounties of the State and the attempt of the State Government to take away part of the pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instructions cannot be countenanced. [*Also Ref.: Dev Prakash Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and Others, (2014) 7 SCC 260*].



- (f) It is a settled position of law that amendments can only be prospective unless specifically given retrospective effect. NBCC in its Board Meeting held on 14.08.2017 decided to amend Rule 8(20)(i) to incorporate a provision enabling initiation of disciplinary proceedings against a superannuated/separated employee. However, amendment cannot apply to the Petitioner, who had severed all relationships with NBCC on 28.10.2016.
- (g) In the alternative, even assuming that the amended Rule applies, disciplinary proceedings shall not be in respect of any event which took place not more than four years before such institution. In the instant case, charge sheet was issued on 30.04.2021 pertaining to allegations for the period 2014-15 and is hit by provisions of Rule 8(20)(i)(a) read with Rule 8(20)(i)(b)(2). **[Ref.: *Government (NCT of Delhi) and Another v. K. Srivatsan, (2014) 15 SCC 476*].**
- (h) Even otherwise, the charge sheet is hit by delay and laches. It has been held in several judgements that undue and unexplained delay in initiating disciplinary proceedings is fatal and on this score also the charge sheet deserves to be quashed. There is an inordinate delay of 7 years from 2014 when the purported misconduct occurred and charge sheet cannot be sustained in view of the law laid down by the Supreme Court in ***M.V. Bijlani v. Union of India and Others, (2006) 5 SCC 88***.



- (i) Clause 7.33 of Vigilance Manual, 2017 (hereinafter referred to as '2017 Manual') heavily relied upon by the Respondents, which in turn, follows MHA O.M. dated 21.02.1967 is wholly inapplicable to the present case. Firstly, Respondents have conveniently omitted the disclaimer which provides that 2017 Manual is intended only to be a reference book and cannot be a substitute for rules, orders, etc. of various authorities and thus only has a guiding value. Clause 7.33 permits action for misconduct in previous employment with a condition precedent that the misconduct alleged should have a rationale connection with the present employment and renders the employee unfit and unsuitable for continuing in service. Moreover, there should be a specific statement to this effect in the charge sheet. Thus no reliance can be placed on the 2017 Manual as it is not a statute and cannot override the NBCC/IRCON Rules, which have no provision permitting action for past misconduct in previous employment. Secondly, there is not a whisper in the charge sheet that Petitioner was unfit for continuing in IRCON. The irrationality in the impugned action is apparent from the fact that the charge sheet is issued on the date of superannuation of the Petitioner by placing reliance on Clause 7.33, which is concerned with the suitability of continuing in service.
- (j) Show-cause notice was issued by MOHUA prior to the issuance of the charge sheet, to which a comprehensive



reply was filed by the Petitioner and from a reading of the charge sheet it is apparent that the reply has not been considered by the concerned authority before issuing the charge sheet.

- (k) Even on merits, the charge sheet cannot be sustained as it is based on incorrect facts and discloses no cause of action against the Petitioner. Petitioner was Director (Projects) and as per Office Order dated 28.11.2013 relating to distribution of work, real estate development and marketing including execution of real estate works was under the control and jurisdiction of Director (Finance) and Director (Projects) only being a signatory on the order of termination of contract had no role to play in levy of liquidated damages, which was in the exclusive jurisdiction of Engineer-in-Charge. Moreover, Office Order No.1101/2013 dated 28.11.2013 reflects that the concerned project was under Director (Finance) and since the note was for termination and award of balance work, it had no reference to liquidated damages which had to be levied by Engineer-in-Charge and was to be routed through Director (Finance), for final approval of CMD.
- (l) Even assuming that the allegations in the charge sheet are correct, they do not constitute misconduct as understood in the legal parlance. In ***Ravi Yashwant Bhoir v. District Collector, Raigad, (2012) 4 SCC 407***, the Supreme Court taking note of definition of “misconduct” from various dictionaries held that mere error of judgment resulting in



a negligent act does not amount to misconduct. Misconduct must be understood as transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, synonymous as misdemeanor in propriety and mismanagement. The decision taken by the Petitioner at the relevant time, which the Respondents today allege in the hindsight as constituting a misconduct, was a collective decision and Petitioner only signed as a member of the Board of Directors. The final approval was undoubtedly of the CMD. It is clear that at best the case against the Petitioner can be one of error of judgment and in the absence of even an allegation of ill motive, no misconduct can be attributed and the charge sheet cannot be sustained. **[Ref.: *Zunjarrao Bhikaji Nagarkar v. Union of India and Others*, (1999) 7 SCC 409].**

6. In response to the contentions of the Petitioner, learned Central Government Standing Counsel for Respondent No.1/Ministry of Railways contended as follows:-

- (a) Writ petition is pre-mature as it lays a challenge to a charge memorandum pursuant to which disciplinary proceedings are yet to be conducted and concluded. Petitioner will be given complete opportunity to adduce his defence, including the grounds raised herein and prove his innocence. It is a settled law that Courts should not ordinarily interfere with the charge sheet at the initial stage except on limited grounds, none of which are made



out in the present petition. The Supreme Court has held in several judgments that Courts should be slow in interfering with charge sheets which are not adversarial proceedings against an employee. *[Ref.: Upendra Singh (supra); Union of India and Others v. P. Gunasekaran, (2015) 2 SCC 610 and N.D. Tyagi v. Power Finance Corporation Ltd. and Others, 2022 SCC OnLine Del 1460]*.

- (b) Petitioner was appointed in IRCON by the President of India and Ministry of Railways is the Competent Authority to charge sheet the Petitioner. At the time of issuance of the charge sheet, Petitioner was a serving employee of IRCON and it is this organization which has to bear the liability of retirement benefits and therefore its Administrative Ministry has the jurisdiction and competence to initiate disciplinary proceedings. Placing reliance on additional documents, Respondent No.1 urges that Petitioner was appointed as CMD, IRCON after being relieved from NBCC and the terms and conditions of his appointment, more particularly, Clause 1.15.1 provides that the Disciplinary Authority of the Petitioner is the President of India. Relevant Clause is as follows:-

“Clause 1.15.1

The Conduct, Discipline and Appeal Rules framed by the CPSE in respect of their non-workmen category of staff would also mutatis mutandis apply to him with the modification that the Disciplinary Authority in his case would be the President of India.”

- (c) Petitioner was serving as Director (Projects) with NBCC till 28.10.2016 and was thereafter appointed as CMD



with IRCON, where he served till the date of his superannuation. Clause 7.33 of 2017 Manual which follows MHA O.M. dated 21.02.1967, permits disciplinary action against an employee in respect of misconduct committed by him in his previous employment if the misconduct was of a nature which renders him unfit or unsuitable for continuing in service in the present employment and therefore the charge sheet has been rightly issued for misconduct committed by the Petitioner in NBCC. Clause 7.33 reads as follows:-

“7.33 ACTION FOR PAST MISCONDUCT IN PREVIOUS EMPLOYMENT

Action can be taken against an employee in respect of misconduct committed by him in his previous or earlier employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service. [MHA O.M. 39/1/67-ESTs(a) dated 21.02.1967]”

- (d) Charge sheet was issued on 30.04.2021, by which date NBCC Rules 1993 had been amended and it is the amended Rule i.e. 8(20)(i)(a) which will govern the case of the Petitioner. Under the amended Rule, disciplinary proceedings can be initiated even against superannuated/separated employee and the charge sheet is in order. Petitioner has been in continuous employment of the Government of India and being a Presidential appointee, MHA O.M. dated 21.02.1967 along with Clause 7.33 of 2017 Manual will be applicable, enabling



Ministry of Railways to initiate disciplinary action with respect to the misconduct committed by the Petitioner during the period when he was employed with NBCC.

- (e) It is not legally permissible to question the charge sheet on merit in view of the settled law that correctness or otherwise of the allegations cannot be examined by the Court at the stage of issuance of charge sheet within the ambit and scope of judicial review under Article 226 of the Constitution of India. Without prejudice, even on this score, submissions of the Petitioner are baseless and it is wrong to urge that he was not responsible, in any manner, for the project in his capacity as a Director (Projects). Petitioner had recommended conclusion of the contract of M/s. Supreme Infrastructure India Limited without levying liquidated damages provided in the contract between the parties, which resulted in financial loss to the organization and amounts to misconduct. Matter was thoroughly investigated by the CVO, NBCC and explanations were called from the Petitioner and other two Board Level Appointees, involved in the matter and the file was forwarded to CVC with due approval of the concerned Minister of State for first stage advice. CVC vide O.M. dated 23.04.2021 advised initiation of major penalty proceedings against the Petitioner and the charge sheet was issued to the Petitioner after approval of the draft charge sheet by the Disciplinary Authority.



Therefore, no interference in the charge sheet is warranted at this stage.

7. Contentions raised on behalf of Respondent No. 2/NBCC were as follows:-

- (a) Under the unamended Rule 8(20)(i), disciplinary proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be proceedings and shall be continued and concluded by the authority by which it was commenced, in the same manner, as if the employee had continued in service. Petitioner being a Presidential appointee i.e. CMD, IRCON was in continuous service of the Government of India and the charge sheet is thus in order and in consonance with MHA O.M. dated 21.02.1967 read with Clause 7.33 of the 2017 Manual.
- (b) No relief has been sought against NBCC and therefore writ petition deserves to be dismissed straightaway against the said Respondent. Without prejudice, it cannot be urged by the Petitioner that there is no merit in the charge sheet. Disciplinary proceedings have their genesis in the proposal for construction of Group Housing Residential Apartments, namely, “NBCC Green Views” with an estimated cost of Rs.256 crores and the scope of work included residential towers, dwelling units, bungalows, schools, etc. Work was awarded to M/s Supreme Infrastructure India Limited on 05.01.2012.



Work was not completed within the stipulated period of 30 months and even after lapse of 32 months only 39% of the total work was executed. Contract was terminated without imposition of liquidated damages for delay and non-performance of the contract and escalation was paid to the contractor. NBCC had to invite another tender for balance work and on both counts suffered financial loss. CVO, NBCC thoroughly investigated the matter and submitted his report. After seeking explanation from the Petitioner and others concerned, matter was referred to CVC for First Stage Advice and it was pursuant thereto that a major penalty charge sheet was issued to the Petitioner. Inquiry should not be indicted at this stage and Petitioner will have all opportunity to lead his defence.

- (c) There is no delay in issuance of the charge sheet. CVO, NBCC carried out an extensive investigation in the matter in 2019 and submitted his report to MOHUA with several observations. CVC asked the CVO vide letter dated 04.12.2019 to carry out further investigation and furnish further report, which was done by the CVO under a letter dated 03.11.2020. Subsequent thereto, based on the observations and lapses pointed out, Memorandums were issued to 18 below Board Level appointees seeking their explanations. A detailed investigation report was submitted to CVC for First Stage Advice vide letters dated 14.01.2021 and 05.02.2021. During the course of examination,



involvement of some Board Level appointees came to light. Matter was again examined in MOHUA and explanation was sought from the Petitioner on 30.12.2020 along with two other Officers. Replies received from them were sent to CVC for First Stage Advice on 04.03.2021. CVC vide O.M. dated 23.04.2021 advised to initiate major penalty proceedings and accordingly after approval of the draft charge sheet by CVC and the Competent Authority, the impugned charge sheet was issued to the Petitioner.

8. I have heard learned counsels for the parties and examined their contentions.

9. Challenge in the present petition is laid to the major penalty charge sheet dated 30.04.2021 issued by the Ministry of Railways. On 28.07.2021, while issuing notice to the Respondents, this Court had directed that the inquiry pursuant to the impugned charge sheet may proceed but final report will be placed before the Court in a sealed cover and will be subject to further orders passed in the writ petition. As per Respondent No.1, the inquiry is over and report has been submitted by the Inquiry Officer.

10. Amongst the myriad of objections and contentions raised by the Respondents opposing the writ petition, the one that first needs consideration is that this Court should not interfere with the charge sheet at this stage as it is always open to the Petitioner to challenge the inquiry proceedings later, if the Disciplinary Authority holds him guilty of the charge and imposes a penalty. Insofar as scope and ambit of judicial review under Article 226 of the Constitution to interfere in



disciplinary proceedings at the stage of charge sheet is concerned, the law is no longer *res integra*. It is trite and there is wealth of judicial precedent that ordinarily a Writ Court would not entertain a writ petition laying a challenge to a show cause notice or a charge sheet as no cause of action arises at this stage in favour of the employee. This rule is, however, not without exceptions *albeit* the exceptions are few and limited. One of the known and accepted carve outs to the general rule of “no interference” is where the charge sheet is not issued by the Competent Authority and is without jurisdiction. In ***Union of India and Others v. B.V. Gopinath, (2014) 1 SCC 351***, the Supreme Court highlighted and emphasized on the importance of the stages prior to the issuance of a charge sheet and held that the Competent Authority to approve a charge sheet is the concerned Disciplinary Authority and in the absence of the approval, the charge sheet becomes *non-est*. It was also held that “Disciplinary Authority” alone can exercise the power of approving and issuing the charge sheet else this would go against the established maxim ‘*delegatus non potest delegare*’. Two passages from the judgment are relevant on this aspect and are extracted hereunder:-

“46. Accepting the submission of Ms Indira Jaising would run counter to the well-known maxim *delegatus non potest delegare* (or *delegari*). The principle is summed up in *Judicial Review of Administrative Action* by De Smith, Woolf and Jowell (5th Edn.) as follows:

“The rule against delegation

A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.”



The same principle has been described in Administrative Law, by H.W.R. Wade & C.F. Forsyth (9th Edn.), Chapter 10, as follows:

“Inalienable discretionary power

An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorised by the authority endowed with the power.”

47. *This principle has been given recognition in Sahni Silk Mills (P) Ltd. [(1994) 5 SCC 346 : 1994 SCC (L&S) 1096] wherein it was held as under: (SCC p. 350, para 6)*

“6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee (sic) is to exercise the power. The real problem or the controversy arises when there is a sub delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place.”

11. In ***Secretary, Ministry of Defence and Others v. Prabhash Chandra Mirdha***, (2012) 11 SCC 565, the Supreme Court summarized the law on interference by the Courts at the stage of charge sheet and held that 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 the Authority not competent to initiate the disciplinary proceedings. The Supreme Court elucidated the same principle earlier in ***Union of India and Another v. Kunisetty Satyanarayana***, (2006) 12 SCC 28, holding that writ jurisdiction is a discretionary jurisdiction and should not



ordinarily be exercised for quashing charge sheet but in rare cases the High Court can quash a charge sheet or show cause notice, if it is found wholly without jurisdiction. In *State of Tamil Nadu represented by Secretary to Government (Home) v. Pramod Kumar, IPS and Another, (2018) 17 SCC 677*, the Supreme Court, relying on the judgment in *B.V. Gopinath (supra)*, held that it is the disciplinary authority which has to draw up or cause to be drawn up the charge memo and reiterated the settled law that if the rule requires something to be done in a particular manner, it should be done either in the same manner or not at all [*Ref.: Taylor v. Taylor, (1875) L.R. 1 Ch.D. 426*] and agreed with the judgment of the High Court quashing the disciplinary proceedings declaring the charge memo as *non-est* in law.

12. From a conspectus of the aforementioned judgments, it is clear that the exception to the general rule of no interference at the stage of charge sheet, as consistently held by the Supreme Court, is where the charge sheet is without jurisdiction and this is really the sheet anchor of Petitioner's case. Therefore, this Court rejects the objection of the Respondents that the Court should not interfere in the charge sheet at this stage since one of the main planks of objection to the charge sheet by the Petitioner is that it is *non-est*, having been issued by an authority not competent to do so. Law attaches great sanctity to this stage of the disciplinary proceeding and the rationale is that a departmental inquiry should not proceed on a charge sheet which is *non-est* and without sanction of law.

13. Indisputably, charge sheet has been issued by the Ministry of Railways. It is equally undisputed and is evident from the charge



sheet that the same was issued under Rule 8 of NBCC Rules 1993. Relevant paragraphs of the Charge Memorandum are as follows:-

*“The President proposes to hold an inquiry against Shri S.K. Chaudhary, presently working as Chairman & Managing Director, Ircon International Ltd., under **Rule 8 of the National Buildings Construction Corporation (Service (Discipline & Appeal) Rules, 1993.** The substance of the imputations of misconduct in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of Charge (Annexure-I). A statement of imputations of misconduct in support of Articles of Charge is enclosed (Annexure-II). A list of documents by which and a list of witness/es by whom the Articles of Charge are proposed to be sustained are also enclosed (Annexure-III & IV respectively).*

2. *Shri S.K. Chaudhary is further informed that he may, if, he so desires, take the assistance of any other public servant, who satisfies the requirements of Rule 8 (6) of the NBCC (D&A) Rules, 1993 for inspecting the documents and assisting him in presenting his case, before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting public Servant(s), Shri S.K. Chaudhary should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other/case(s), if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the CVO/Ircon International Ltd., along with the nomination.”*

(emphasis supplied)

14. Rule 7 of NBCC Rules 1993 provides the minor and the major penalties that may be imposed on an employee for misconduct committed during the course of employment. Rule 8 delineates the procedure for imposing major penalties. Rule 8(2) stipulates that whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into or appoint an Inquiry Officer. Sub-rule (3) mandates the Disciplinary Authority



to frame definite charges on the basis of the allegations against the employee where it proposes to hold an inquiry. Relevant Rule is extracted hereunder:-

“8. PROCEDURE FOR IMPOSING MAJOR PENALTIES

1) *No order imposing any of the major penalties specified in clause(f), (g), (h) and (i) of rule 7 shall be made except after an inquiry is held in accordance with the rule.*

2) *Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any Public Servant including a retired Public Servant, [Retired Officer from Public Sector Undertakings] 2 (hereinafter called the Inquiring authority) to enquire into the truth thereof.*

3) *Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with a statement of the allegations, on which they are based, a list of documents by which and a list of witnesses by whom, the article of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), a written statement whether he admits or denies any of or all the articles of charge;”*

15. Rule 2(b) defines “Appointing Authority” to mean the authority empowered to make appointments in relation to the employee. Rule 2(f) defines “Disciplinary Authority” to mean the authority specified in the Schedule. Rule 2(b), (f) and the Schedule are as follows:-

b) **“Appointing Authority”** *in relation to an employee of the Corporation means the authority empowered to make appointments to the class, grade of posts, as the case may be, in which he is for the time being employed;*

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f) **“Disciplinary Authority”** *means the authority specified as such in the schedule;”*



[SCHEDULE TO NBCC (DISCIPLINE AND APPEAL) RULES, 1993]

Level of posts	Appointing Authority	Disciplinary Authority	Penalties	Appellate Authority	Reviewing Authority
1	2	3	4	5	6
<u>Group "A"</u>					
Dy. General Manager & above	Chairman-cum-Managing Director	Chairman-cum-Managing Director	All (Major & Minor)	Board of Directors.	Authority next higher to the Appellate Authority.
DPM to PM & equivalent in other cadres	Director	Director	All (Major & Minor)	Chairman-cum-Managing Director	-do-
Sr. Project Executive and equivalent in other cadres	ED/GGM	ED/GGM	All (Major & Minor)	Director	-do-

16. A conjoint reading of the aforementioned sub-rules of Rule 8 clearly demonstrates that a charge sheet for major penalty proceeding can only be issued by the Disciplinary Authority, defined in Rule 2(f) and perusal of the Schedule reflects that for a Director, Disciplinary Authority is the CMD, NBCC and the Appellate Authority is the Board of Directors, NBCC. Therefore, under no circumstance a charge sheet can be issued under Rule 8 by any authority other than the Disciplinary Authority prescribed under Rule 2(f) read with the Schedule. Petitioner is thus right that charge sheet issued under Rule 8 of NBCC Rules 1993 is without jurisdiction having been issued by the Ministry of Railways. In ***B.V. Gopinath (supra)***, the Supreme Court has held that Articles of Charges have to be approved and finalized by the Disciplinary Authority and the charge sheet not issued by the Disciplinary Authority is without authority of law and *non-est*. In the said case, the charge sheet was quashed on this very ground.



17. Insofar as IRCON is concerned, expression 'employee' is defined in Rule 3(a) of IRCON Rules 1981, as a person in the employment of the undertaking other than casual, work charged, contingent staff or workmen as defined in the Industrial Disputes Act, 1947 but includes a person on deputation. Rule 24 provides that the Disciplinary Authority as specified in the Schedule or any authority higher than it may impose any of the penalties specified in Rule 23 on an employee. Quite clearly, procedure for imposing major penalties, provided under Rule 25, mandates that the charge sheet shall be drawn up by the Disciplinary Authority and it is only this authority which has the competence to take a decision to initiate disciplinary proceedings and approve the charge sheet.

18. Disciplinary Authority is defined in Rule 3(f) to mean the authority specified in the Schedule appended to the Rules and competent to impose any of the penalties under Rule 23. Therefore, it is clear that under both the Rules respectively i.e. NBCC Rules 1993 and IRCON Rules 1981, there are designated Disciplinary Authorities and the authority prescribed under one Rule cannot issue charge sheet under the other Rule. Impugned charge sheet has been issued under Rule 8 of NBCC Rules 1993 but not by Disciplinary Authority provided therein and Ministry of Railways has no jurisdiction to issue a charge sheet under NBCC Rules and the charge sheet is thus without jurisdiction not having been issued by the Competent Disciplinary Authority and cannot be sustained in law.

19. Although in view of the aforesaid finding, it is unnecessary to proceed further with the other arguments raised by the Petitioner for quashing the charge sheet, nonetheless, since the contentions have



been raised, this Court deals with them hereinafter. Petitioner contends that under the unamended Rule 8(20)(i), there was no jurisdiction with NBCC to initiate disciplinary proceedings post-retirement/separation of an employee and even if amended Rule 8(20)(i)(a) applies, charge sheet cannot be issued as the event with respect to which charge sheet is issued was more than four years before the initiation of the disciplinary proceedings. This Court finds merit in the contention. It is an undisputed fact that Petitioner joined as Director (Projects) in NBCC on 13.11.2013 and was relieved on 28.10.2016 and the allegations pertain to the years 2014-15. Therefore, whether the matter is seen from the perspective of the period of allegations or the date of separation of the Petitioner from NBCC, unamended Rule 8 shall be applicable. Rule 8(20)(i) reads as follows:-

“8. PROCEDURE FOR IMPOSING MAJOR PENALTIES

xxxx xxxx xxxx xxxx

20) Continuation of Disciplinary proceedings after retirement.

20(i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.”

20. A perusal of the Rule shows that disciplinary proceedings can continue after the retirement of the employee under this Rule only if they were instituted while the employee was in service, whether before his retirement or during his re-employment and shall be deemed to be proceedings and be continued and conducted in the same manner as if the employee had continued in service. There is no provision permitting disciplinary proceedings to be initiated after the retirement/separation of the employee, if they were not instituted



while the employee was in service, before his retirement or during his re-employment. Therefore, under the unamended Rule 8(20)(i), charge sheet could not have been initiated against the Petitioner even one day after 28.10.2016, the day he was relieved from NBCC and proceeded to join IRCON. Rule 8(20)(i)(a) was incorporated by way of an amendment, pursuant to a decision taken in the Board Meeting held on 14.08.2017 and no material has been placed on record by the Respondents to evidence amendment was given retrospective effect and thus Respondents cannot claim that the amendment will apply to those employees who had retired/separated from NBCC prior to the date of the amendment.

21. Assuming for the sake of argument that amended Rule 8(20)(i)(a) applies to the present case, even then disciplinary proceedings cannot be initiated against the Petitioner on the strength of this amendment and the reason is not far to seek. Rule 8(20)(i)(a) permits NBCC to initiate disciplinary action for any misconduct committed by any employee during his service in the company even if he has superannuated/separated from the company. The provision is however fettered with two caveats, which cannot be glossed over. Rule 8(20)(i)(b), Rule 8(20)(i)(b)(1) and Rule 8(20)(i)(b)(2) read conjointly, leave no room for doubt that disciplinary proceedings, if not instituted while the employee was in service, for an offence whether before his retirement or during his re-employment shall not be instituted save with the sanction of the Board of Directors in case of an employee below the Board Level and of the Administrative Ministry in case of Board Level employee and proceedings shall not be in respect of any event which took place not more than four years



before such institution. Rules are extracted hereunder for ready reference:-

“8. PROCEDURE FOR IMPOSING MAJOR PENALTIES

xxxx

xxxx

xxxx

xxxx

8(20)(i)(a):

An employee who has superannuated/separated from the Company shall be deemed to be an employee for a disciplinary action for any misconduct committed by him during his service in the Company.

8(20)(i)(b)

That the disciplinary proceedings, if not instituted while the employee was in service, for an offence whether before his retirement or during his re-employment.

8(20)(i)(b)(1)

Shall not be instituted save with the sanction of the Board of Directors in the case of an employee below the Board level, and of the Administrative Ministry in case of a Bound level employee, including an officer on deputation from the Central Government even to a post below the Board level.

8(20)(i)(b)(2)

Shall not be in respect of any event which took place not more than four years before such institution.”

22. Therefore, even if the amended Rule 8(20)(i)(a) is to apply, Respondents will have to first establish that the impugned charge sheet was issued with the sanction of the Competent Authority under NBCC Rules 1993 and secondly, is with respect to an event which took place not more than four years before the issuance of the charge sheet. Respondents, in my view, have failed to discharge this onus as they have neither pleaded nor shown that the impugned charge sheet was issued with the sanction of the Competent Authority stipulated in Rule 8(20)(i)(b)(1). Insofar as Rule 8(20)(i)(b)(2) is concerned, charge sheet is issued on 30.04.2021 while allegations pertain to the years 2014-15 and thus the event is more than four years before the



institution of disciplinary proceedings and thus even on this score, Respondents cannot succeed.

23. In the view taken above, this Court finds support not only from the provision of law itself but also from a recent judgment of the High Court of Gujarat decided on 08.02.2022 in ***Hardesh Kumar Sharma v. Institute of Plasma Research, MANU/GJ/0390/2022***. In the said case, the Petitioner, an ex-employee of the Respondent i.e. Institute of Plasma Research had assailed the show cause notice and the charge sheet. Petitioner was initially appointed by the said Institute and thereafter on 10.03.2017, he was appointed by the Indian Institute of Gandhinagar. For certain irregularities and alleged misconduct during his service with the erstwhile employer, a charge sheet was issued on 01.12.2020. One of the major contentions of the Petitioner, relying on Rule 9(2)(b) of the Central Civil Service (Pension) Rules, 1972, was that no charge sheet could be issued for an event before 30.11.2016. Respondent had *inter alia* contested the petition on the ground that it was pre-mature as ordinarily Courts do not interfere at the stage of show cause notice or charge sheet. It needs to be noted that Rule 9(2)(b) is *pari materia* to Rule 8(20)(i)(b)(2) of NBCC Rules 1993 and is extracted hereunder, for ready reference:-

“Rule 9 - Right of President to withhold or withdraw pension:

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:



Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five per mensem]

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that in all cases where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his reemployment,-

(i) shall not be instituted save with the sanction of the President.

(ii) shall not be in respect of any event which took place more than four years before such institution; and....”

24. After examining the issue and referring to the judgment of the Supreme Court in ***State of U.P. and Another v. Shri Krishna Pandey, (1996) 9 SCC 395***, the High Court of Gujarat quashed the charge sheet. Relevant paragraphs are as follows:-

“6.10. ...Rule 9 provides for the right of the President to withhold or withdraw the pension. At the cost of reiteration it may be said that sub-rule (1) provides that the President reserves to himself the right of withholding a pension or gratuity if in any departmental or judicial proceedings a pensioner is found guilty of grave misconduct or negligence during the period of service including service rendered upon reemployment after retirement. Reading this would indicate that misconduct committed while in service before retirement and misconduct committed in service during the period of reemployment are treated separately. Reading sub-rule 2(a) in context of sub-rule (1) would mean that departmental proceedings instituted while the Government servant was in service for the misconduct committed while in service and departmental proceedings instituted for the misconduct committing while in service during his reemployment. Rule 9(2)(a) therefore is evidently not applicable in the facts of the case and what will apply is Rule 9(2)(b) of the Central Civil Services and Pension Rules. Having held



thus, the decision in the case of **Shri Krishna Pandey (supra)**. Para 6 thereof would come into play. Para 6 thereof reads as under:

“6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon.”

7. Evidently therefore, since the petitioner was not reemployed, the event for which the charges were framed for misconduct were pre-30.11.2016 i.e. more than four years before the event and for which no sanction of the President be obtained, the chargesheet dated 01.12.2020 is held to be without authority of law and is accordingly quashed and set aside.

8. The petition is allowed. Rule is made absolute.”

25. To counter this argument, Respondents have heavily relied on MHA O.M. dated 21.02.1967 and Clause 7.33 of 2017 Manual and



contend that an action can be taken against an employee in respect of misconduct committed by him in his previous or earlier employment if the misconduct was of such a nature as has rational connection with his present employment. Clause 7.33 is extracted in the earlier part of the judgment and relevant paragraph of MHA O.M. dated 21.02.1967 is extracted hereunder for ready reference:-

“The undersigned is directed to say that it has been recommended by the Joint Conference of the Central Bureau of Investigation and State Anti-Corruption Officers held in November, 1965, that a provision should be made in the rules of public sector undertakings which would enable them to take disciplinary action against their employees appointed through direct recruitment, for acts done by them in their previous or earlier employment. After a careful consideration of this recommendation, Government have come to the conclusion that an employer is not precluded from taking action against an employee in respect of misconduct committed before his employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. A provision in the Discipline Rules that penalties can be imposed for 'good and sufficient reasons', as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, would be adequate authority for taking action in respect of misconduct of the nature referred to above. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.

2. Ministry of Industry etc. are requested to bring the above position to the notice of all public sector undertakings under their control and request them to make a provision in their Discipline Rules so as to enable them to impose penalties on their employees for 'good and sufficient reasons', as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, if such a provision does not already exist.”

26. A plain reading of the two clauses shows that undoubtedly an action can be taken against an employee for a past misconduct in previous employment, however, the points that the Respondents are missing is that such past misconduct should be of a nature which has rational connection with the present employment and 'renders him



unfit and unsuitable for continuing in service'. It further requires the charge to specifically state, when such action is taken, that the past misconduct renders him unfit and unsuitable for continuance in service. In the present case, the charge sheet was issued on 30.04.2021, the day on which Petitioner was retiring on superannuation from IRCON and there was even otherwise no question of his continuing in service beyond the date of superannuation. It is thus not understood how these O.M.s have been invoked to chargesheet the Petitioner, where the pre-condition is that the misconduct is such that the employee is unfit to continue in service. Even if the two O.M.s are construed in favour of the Respondents, the impugned charge sheet cannot be sustained as the same has been issued by Ministry of Railways under NBCC Rules 1993, not being a Disciplinary Authority under the said Rules.

27. Respondents have also sought to justify the charge sheet on the ground that Petitioner was an appointee by the President of India and can be charge-sheeted by the Ministry of Railways. This argument merits rejection. The question here is not of nature or status of appointment but the Disciplinary Rules under which the Petitioner has been charge-sheeted and the Disciplinary Authority prescribed therein. It bears repetition to state that Disciplinary Authority designated and prescribed under one Rule cannot charge sheet an employee invoking another Rule applicable to a different organization.

28. Reliance of the Respondents on the judgment in *P. Gunasekaran (supra)* is wholly misplaced in the backdrop of the controversy involved in the present petition. The Supreme Court in the said judgment has laid down the scope of interference in service



matters, particularly, disciplinary proceedings and essentially deals with interference by the Courts at the stage of examining an inquiry proceeding which has concluded and culminated into punishment. It is in this context that the Supreme Court held that the scope of interference cannot be expanded to appreciate and reappraise evidence or interfere with quantum of punishment and the High Court in exercise of its powers under Articles 226 and 227 of the Constitution can only interfere to examine if the inquiry held by a Competent Authority was in accordance with procedure established by law and principles of natural justice, whether irrelevant or extraneous considerations and/or exclusion of admissible or material evidence or admission of inadmissible evidence have influenced the decision rendering it vulnerable or where the finding is wholly arbitrary and capricious based on no evidence, which no reasonable man could arrive at. In the present case, the challenge to the charge sheet is primarily on the ground of lack of jurisdiction and interference by the High Court is not insulated. Rather, the law as propounded by the Supreme Court permits interference with the charge sheet when it is without jurisdiction and not approved/issued by the authorized and designated disciplinary authority. For the same reason the judgment in *Upendra Singh (supra)*, will not come to the aid of the Respondents.

29. Heavy reliance was placed by the Respondents on the judgment of this Court in *N.D. Tyagi (supra)*, but in my view, the judgment is wholly inapplicable to the present case. In the said case, Petitioner had questioned the authority of the inquiry officer to proceed further in the matter in light of a perceived bias and an asserted failure to conduct the inquiry in a fair and impartial manner. By the time the petition



came up for hearing, the said inquiry officer against whom allegations of bias were levelled, had been replaced by a new inquiry officer. The challenge to the charge sheet was also on the ground that the borrowing authority i.e. Power Finance Corporation Consulting Limited ('PFCCL') alone had the authority and jurisdiction to commence disciplinary proceedings in respect of the alleged misdemeanors and therefore no charge sheet could be issued by Power Finance Corporation Limited ('PFCL'), the employer of the Petitioner. In response, a categorical stand was taken by the Respondents that posting of the Petitioner in PFCCL was merely a transfer and that although PFCCL was incorporated as a wholly owned subsidiary, disciplinary and administrative control over officers and employees of PFCL, whose services had been lent continued to remain with PFCL *albeit* admitting that in a case of jurisdictional challenge to the charge sheet, writ petition was maintainable.

30. Examining the issue, the Court observed that a holistic reading of the rules in question established that the borrowing authority had been conferred the jurisdiction to proceed departmentally against an employee whose services were lent to it and exercise the same very powers which were available to the disciplinary authority subject only to the caveat that if in those proceedings it comes to a conclusion that a major penalty is liable to be imposed, it would be obliged to transmit the entire proceedings of inquiry to the disciplinary authority of the lending institution for taking further action. This judgment, in my view, only favours the Petitioner for two reasons. Firstly, the Court notices in paragraph 19 that ordinarily a writ petition challenging a charge sheet would not be liable to be entertained unless there be a



jurisdictional challenge to the initiation or continuance of disciplinary proceedings, which is the primordial grievance of the Petitioner in the present case. Secondly, the Court recognizes the well-established principle of law that only an authority empowered to act as a disciplinary authority can issue a charge sheet and initiate disciplinary proceedings. In the said case, while the borrowing authority had the power to initiate disciplinary proceedings, however, in the case of a major penalty proceeding, it was obliged to send the matter to the lending authority, which alone had the authority to proceed against the Petitioner.

31. For all the aforesaid reasons, the impugned charge sheet dated 30.04.2021 is quashed and set aside with all consequential benefits. Writ petition is allowed and disposed of in the aforesaid terms. All pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 04, 2023/kks/shivam