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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 16th May, 2023

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+ W.P.(C) 13926/2018

MR. PALASH GOSWAMI

..... Petitioner

Through: Mr. Ganesh Chand Sharma and
Mr. Abhinav Arora, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Kirtiman Singh, Central
Government Standing Counsel with
Mr. Waize Ali Noor, Ms. Shreya V. Mehra,
Mr. Madhav Bajaj and Mr. Yash Upadhyay,
Advocates for R-1.

Mr. Vivek Sibal, Senior Advocate with
Mr. Rahul Sharma and Mr. Ayush Bhatia,
Advocates for R-2.

Ms. Vibhooti Malhotra, Mr. Bhuvnesh Satija
and Mr. Udit Sharma, Advocates for R-3.

93

+ W.P.(C) 6567/2019

PALASH GOSWAMI

..... Petitioner

Through: Mr. Ganesh Chand Sharma and
Mr. Abhinav Arora, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Kirtiman Singh, Central
Government Standing Counsel with
Mr. Waize Ali Noor, Ms. Shreya V. Mehra,
Mr. Madhav Bajaj and Mr. Yash Upadhyay,
Advocates for R-1.

Mr. Vivek Sibal, Senior Advocate with
Mr. Rahul Sharma and Mr. Ayush Bhatia,
Advocates for R-2.

91

+ CONT.CAS(C) 971/2019

PALASH GOSWAMI

..... Petitioner

Through: Mr. Ganesh Chand Sharma and
Mr. Abhinav Arora, Advocates

versus

DR ASHARAM SIHAG

..... Respondent

Through: Mr. Kirtiman Singh, Central
Government Standing Counsel with
Mr. Waize Ali Noor, Ms. Shreya V. Mehra,
Mr. Madhav Bajaj and Mr. Yash Upadhyay,
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

**W.P.(C) 13926/2018 & C.M. APPL. 54491/2018, 15202/2019,
21049/2019, 51361/2019 & 51362/2019 AND
W.P.(C) 6567/2019 & CM APPL. 27745/2019 & 27746/2019**

1. W.P.(C) 13926/2018 was filed by the Petitioner challenging the impugned suspension order dated 01.08.2017 as also for a direction to stay/set aside the inquiry proceedings which are pending against him. Direction is sought to Respondent No. 3 for initiating fast track inquiry on the complaint of the Petitioner dated 26.04.2016 and to award him compensation of Rs.10 crores for mental cruelty etc. on account of alleged illegal suspension. Writ of mandamus is also sought for constituting an SIT under the supervision of this Court for inquiring into alleged corrupt practices leading to closure of HPC Limited etc. W.P.(C) 6567/2019 has been filed seeking release of subsistence allowance for the period of suspension. Since the issues in both the writ petitions are inextricably linked, they have been heard together with the consent of the counsels for the parties and are being

Signature Not Verified decided by this common judgment.

Signed By: KAMAL KUMAR W.P.(C) 13926/2018 & connected matters

Signing Date: 14.06.2023
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2. At the outset, it needs to be mentioned that by an order dated 21.12.2018 in W.P.(C) 13926/2018, Court had stayed the inquiry proceedings against the Petitioner till further orders with a further direction to pay the subsistence allowance without delay, in accordance with law. An application being CM APPL. 15202/2019 was filed by Respondent No. 1/Union of India seeking vacation of the stay order dated 21.12.2018 which is pending for consideration. Additionally, an application being CM APPL. 15970/2019 was also filed by Respondent No. 2/Hindustan Paper Corporation Limited ('HPCL') for modification of order dated 21.12.2018 to the extent the Court had directed payment of subsistence allowance.

3. It would be pertinent at this stage to refer to the order passed by the Court in the application being CM APPL. 15970/2019 as the same would have a bearing on the relief claimed in W.P.(C) 6567/2019. It was stated in the application by HPCL that it was a Public Sector Enterprise wholly owned by the Government of India and a petition was filed by an Operational Creditor against HPCL before NCLT in which Interim Resolution Professional was appointed on 13.06.2018 by NCLT. Later, pursuant to the decision of the Committee of Creditors ('COC'), a Resolution Professional was appointed. It was further stated in the application that Petitioner had not disclosed that he had already filed an application dated 16.11.2018 being CA No. 763/2018 before NCLT, wherein he sought payment of subsistence allowance. HPCL brought out in the application that upon admission of insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 ('IBC'), moratorium was in force in respect of the company and by virtue of Section 14 of IBC, no legal proceedings including recovery proceedings could be instituted during the moratorium against the Corporate Debtor. The financial status of HPCL was also placed on record in the application apart from the legal position that

no preferential treatment could be accorded to the Petitioner for payment of subsistence allowance on account of the insolvency proceedings against HPCL. It was stated that there was severe shortage of funds because of which HPCL was unable to pay salaries to the employees for over 25 months and payment of subsistence allowance amounting to Rs.18,81,734/- to the Petitioner would amount to not only granting a preferential treatment, which was impermissible in law, but would be against the decision of the COC wherein it was observed that the claim of the Petitioner was already pending before the CIRP.

4. The application was heard by the Court on 05.04.2019 and recording the fact that Petitioner had already filed his claim before the NCLT for subsistence allowance, which fact was not disclosed at the time of passing the order dated 21.12.2018, Court modified the said order to the extent that Respondents were not bound to pay the subsistence allowance to the Petitioner. It is an undisputed position that this order was never challenged by the Petitioner. It is also required to be noted at this stage that a short affidavit has been filed on behalf of the Liquidator of HPCL wherein it is stated that on 02.05.2019 NCLT had passed an order under Section 33 of IBC for liquidation of the Corporate Debtor and the Liquidator was appointed. Pursuant to the liquidation order, public announcement was made on 17.05.2019 inviting claims from all stakeholders of HPCL. Order dated 02.05.2019 was challenged in separate appeals by HPCL Officers and Supervisors Association, Cachar Paper Project Workers' Union (INTUC) and the Petitioner. The appeals were disposed of by NCLAT on 13.05.2019 upholding the order of NCLT with certain directions and pursuant to the public announcement, Petitioner has submitted his claim through his duly authorized representative for an amount of Rs.63,76,455/-. HPCL has admitted an amount of

Rs.51,30,992/- as due to the Petitioner after verifying the claims with the officials of the Corporate Debtor and the list of admitted claims of all stakeholders was published on 27.07.2019. Considering that the order dated 05.04.2019 was never challenged by the Petitioner and that his claim for subsistence allowance is pending and will be decided in accordance with law along with other stakeholders since HPCL has gone into liquidation, no order is required to be passed in W.P.(C) 6567/2019, in which the only relief claimed is for grant of subsistence allowance. The issue of subsistence allowance is left open to be decided in the appropriate proceedings. The writ petition being W.P.(C) 6567/2019 is accordingly disposed of along with pending applications.

5. Insofar as W.P.(C) 13926/2018 is concerned, perusal of the writ petition as well as the prayer clause shows that multifarious grounds have been urged in the writ petition and several reliefs have been claimed by the Petitioner which, in my view, are wholly unrelated to each other and there is a misjoinder of causes of action. However, from the arguments canvassed by the learned counsel for the Petitioner what emerges is that essentially the Petitioner is aggrieved by the impugned suspension order and the initiation of inquiry proceedings.

6. Insofar as the suspension order dated 01.08.2017 is concerned, while lots of grounds have been pleaded to challenge the same, essentially what is argued is the suspension is a fall out of vindictiveness and *malafide* and that Petitioner was victimized as he was the whistle blower who pointed out and flagged that there was corruption and diversion of funds in HPCL. The only other ground pressed is that the suspension could not have been prolonged/extended from time to time and since no charge sheet was served on the Petitioner within 3 months from the date of the suspension order,

suspension would be deemed to have automatically come to an end of the said period. In a nut shell, the argument is that it was illegal to have continued suspension of the Petitioner beyond a period of 3 months from the date of initial suspension order. Reliance is placed on the judgment of the Supreme Court in this context in the case of ***Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291.***

7. Insofar as the alleged victimization is concerned, there is no material placed on record by the Petitioner which evidences that his suspension was a result of any *malafide* or vindictiveness as alleged and even during the course of arguments, counsel for the Petitioner has not been able to establish his case, save and except, repeatedly asserting that Petitioner made various complaints of diversion and siphoning of funds for which he had to face suspension. There are no pleadings of allegations against any individual and none has been made a party. In fact, Respondent No. 1 has filed a short affidavit and an application for vacation of stay order, whereby the inquiry proceedings were stayed by the Court in which there is a narrative of the background which led to the suspension of the Petitioner followed by issuance of charge sheet and which *prima facie* negates the argument of alleged *malafide* or victimization of the Petitioner. It is stated that HPCL, a Government of India Undertaking, was engaged in production of writing and printing paper and had two units in Assam. HPCL had three subsidiaries of which one of them being NPPC was declared a sick industrial company in August, 1998 by BIFR. The Union Cabinet in its meeting held on 04.06.2013 sanctioned a revival package and HPCL was instructed to follow the 'escrow account mechanism' for proper utilization of funds. An amount of Rs.100 crores was released towards part revival plan by the Government of India vide sanction order dated 19.09.2013 with certain pre-conditions. Subsequently, a complaint was received based

on which the Chief Vigilance Officer, HPCL forwarded a factfinding report pertaining to diversion of funds of NPPC by Management of HPCL. A three-member committee was constituted by the Department of Heavy Industry to look into the issue. Committee submitted its report which brought to light certain issues and in order to inquire into the same, actions were initiated against the Senior Officials of HPCL, including major penalty proceedings against the Petitioner, who was Director (Finance). Accordingly, Petitioner was suspended w.e.f. 01.08.2017 and a charge sheet was issued on 01.02.2018.

8. Insofar as the argument that if the charge sheet is not issued within three months of suspending an employee, the suspension automatically comes to an end is concerned, this Court finds no merit in the same as general rule. It is no doubt true that Courts have repeatedly emphasized that suspension should not be unnecessarily prolonged and an employee cannot and should not be kept under suspension unnecessarily and if disciplinary action is contemplated, the same must be initiated without delay and concluded expeditiously, however, this Court cannot agree with the stand taken by the Petitioner that merely because charge sheet is not issued within three months of initial suspension period, the suspension period would automatically come to an end, as a thumb rule in every case. The proposition canvassed by the Petitioner does not even flow from reading of the judgment of the Supreme Court in *Ajay Kumar Choudhary (supra)*, on which heavy reliance is placed by the Petitioner's counsel. In para 21 of the said judgment, the Supreme Court has directed that currency of the suspension order should not extend beyond three months, if within this period memorandum of charges is not served on the delinquent employee. This, in my view, does not lay down an absolute proposition of law that in every case, failure to issue a charge sheet within three months would lead to the

suspension order coming to an end, automatically. In fact, in para 22 of the said judgment, the Supreme Court, noting that charge sheet had now been issued to the Appellant, permitted him to challenge his continued suspension, if so advised and this was despite the fact that the charge sheet was issued much beyond a period of 08 months. It may be relevant to note that a Division Bench of this Court in ***Govt. of NCT of Delhi v. Dr. Rishi Anand, 2017 SCC OnLine Del 10506*** had the occasion to consider the same issue and reliance was placed by the Respondent therein on the judgment in ***Ajay Kumar Choudhary (supra)***. The Division Bench held as follows:-

“13. We have heard learned counsels for the parties and considered their submissions. We have also perused the decision of the Supreme Court in Ajay Kumar Choudhary (supra). In Ajay Kumar Choudhary (supra), the appellant had assailed his suspension even before issuance of the charge sheet. He had been suspended with effect from 30.09.2011 and the Supreme Court observed that the same “has been extended and continued ever since”.

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16. It appears that before the Supreme Court rendered its decision on 16.02.2016, the charge sheet had been served on the appellant - though from a reading of the decision it is not clear as to on what date the same was so served. This development was taken note of by the Supreme Court in its decision. In para 22 of the decision, the Supreme Court observed:

*“22. So far as the facts of the present case are concerned, **the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer.** However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the respondents will be subject to judicial review”.*

(emphasis supplied)

17. Thus, even though the charge sheet had not been served on the appellant Ajay Kumar Choudhary when he initially assailed his suspension, or even till the hearing of the appeal took place before the Supreme Court on 09.09.2014 (it was only between 09.09.2014 and the date of decision on 16.02.2015 that the charge sheet appears to have been served), the Supreme Court held that since the charge sheet had been served on the appellant, therefore, the directions issued by it would not be relevant to his case. Despite the fact that the appellant Ajay Kumar Choudhary had remained under suspension right from 30.09.2011, the Supreme Court did not set

aside the order of suspension since, in the meantime, Ajay Kumar Choudhary had been served with a charge sheet sometime after 09.09.2014, i.e. nearly three years after his suspension.

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19. There can be no quarrel with the proposition that a government servant who is suspended in contemplation of a disciplinary proceedings or criminal proceedings under Rule 10 of the CCS (CCA) Rules, should not be kept under suspension indefinitely or unnecessarily. It is for this reason that a review of the on-going suspension is required to be undertaken by the government at regular intervals under Rule 10(6) of the CCS (CCA) Rules, which reads as under:

*“10(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension [before expiry of ninety days from the effective date of suspension] on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. **Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.**”*

(emphasis supplied)

20. It may not always be possible for the government to serve the charge sheet on the officer concerned within a period of 90 days, or even the extended period, for myriad justifiable reasons. At the same time, there may be cases where the conduct of the government servant may be such, that it may be undesirable to recall the suspension and put him in position once again, even after sanitising the environment so that he may not interfere in the proposed inquiry. On a reading of Ajay Kumar Choudhary (supra), we are of the view that the Supreme Court has not denuded the Government of its authority to continue/extend the suspension of the government servant - before, or after the service of the charge sheet - if there is sufficient justification for it. The Supreme Court has, while observing that the suspension should not be extended beyond three months - if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer, has stopped short of observing that if the charge memo/charge-sheet is not issued within three months of suspension, the suspension of the government servant shall automatically lapse, without any further order being passed by the Government. No such consequence - of the automatic lapsing of suspension at the expiry of three months if the charge memo/charge-sheet is not issued during that period, has been prescribed. In Kailash v. Nanhku, (2005) 4 SCC 480 : AIR 2005 SC 2441, while examining the issue : whether the obligation cast on the defendant to file the written statement to the plaint under Rule (1) of Order 8 CPC within the specified time was directory or mandatory i.e. whether the Court could extend the time for filing of the written statement beyond the period specified in Rule 1 of Order 8, the Supreme Court held

that the Court had the power to extend the time for filing of the written statement, since there was no consequence prescribed flowing from non-extension of time. In para 29 of this decision, the Supreme Court observed as follows:

“29. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words “shall not be later than ninety days” but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.”

(emphasis supplied)

21. The direction issued by the Supreme Court is that the currency of the suspension should not be extended beyond three months, if the charge memorandum/charge-sheet is not issued within the period of 3 months of suspension. But it does not say that if, as a matter of fact, it is so extended it would be null and void and of no effect. The power of the competent authority to pass orders under Rule 10(6) of the CCS (CCA) Rules extending the suspension has not been extinguished by the Supreme Court. The said power can be exercised if good reasons therefor are forthcoming.

22. The decision of the Supreme Court in Ajay Kumar Choudhary (supra) itself shows that there cannot be a hard and fast rule in this regard. If that were so, the Supreme Court would have quashed the suspension of Ajay Kumar Choudhary. However, in view of the fact that the charge memo had been issued to Ajay Kumar Choudhary - though after nearly three years of his initial suspension, the Supreme Court held that the directions issued by it would not be relevant to his case.

23. From a reading of the decision in Ajay Kumar Choudhary (supra) and Rule 10 of the CCS (CCA) Rules, it emerges that the government is obliged to record its reasons for extension of the suspension which, if assailed, would be open to judicial scrutiny - not as in an appeal, but on grounds available in law for judicial review of administrative action.

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26. Thus, there is no force in the submission of the respondent that the suspension of the respondent automatically lapsed since the charge sheet was not issued within the initial period of 90 days. Pertinently, the respondents suspension was reviewed and extended by the government within the initial period of 90 days on 27.09.2016. Thus, the suspension of the respondent did not lapse under sub rule (7) of Rule 10 CCS (CCA) Rules.

27. *We are of the considered view that in the facts of the present case, the impugned order was certainly not called for, revoking the suspension of the respondent. When the O.A. was preferred, the charge sheet had already been issued to the respondent on 01.03.2017. At the highest, the tribunal could have called upon the petitioner to justify its extension by passing a reasoned order. It was not for the tribunal to step into the shoes of the administration, and to take a decision - which only the administration can take, on the issue whether the suspension of the charged officer should continue, or not. The jurisdiction of the tribunal is confined to examining the administrative action of the government on the well established objective principles of judicial review and, where it considers necessary, to require the government to perform its statutory obligation to take a decision. In view of the aforesaid, the impugned order cannot be sustained and is, accordingly, set aside."*

9. Therefore, the position that emerges from a conjoint reading of the aforesaid judgments is that there is no hard and fast rule that suspension of an employee cannot be extended beyond three months in no case and/or if within this period memorandum of charge sheet is not served the suspension will automatically lapse, contrary to what is urged by the Petitioner *albeit* suspension should not be indefinitely or unnecessarily prolonged and law mandates that periodic review of the ongoing suspension must be undertaken by the employer. In this case, HPCL has gone into liquidation and thus the question of revocation of suspension and re-instatement even otherwise does not arise. This contention is thus rejected. In the present case, charge sheet was issued against the Petitioner on 01.02.2018 and inquiry proceedings were initiated, which have been kept in abeyance due to the interim stay order passed by this Court. In this view of the matter, no order can be passed at this stage and it is only after the disciplinary proceedings come to an end and depending on their outcome, decision shall be taken by the Respondents to treat the same as spent on duty or otherwise and accordingly order will be passed on the pay and allowances for the said period.

10. Insofar as the inquiry proceedings are concerned, learned counsel for the Petitioner limits his challenge to the impugned charge sheet dated 01.02.2018 to two grounds: (a) charges are vague, indefinite and unclear and it is not understood what allegations are sought to be levelled against the Petitioner; and (b) the charge of alleged diversion of funds of hundred crores levelled against the Petitioner is completely false for the simple reason that Petitioner joined HPCL after 15 months of the diversion and he was the whistle blower who brought to light the corruption amongst the officials and diversion of funds as also the fact that Respondent No. 3 had deliberately violated the terms of the order dated 02.07.2013 pertaining to 'escrow account mechanism' by deleting the vital conditions under which initial amount of Rs.100 crores was released for revival of NPPCL on 21.09.2013 into sales collection account of HPCL with IDBI and on this count huge money was diverted. It was the Petitioner who also flagged that only Rs. 3.25 crore was left in the account of HPCL against the receipt of Rs.100 crores. Learned counsel for the Petitioner relied on the judgment of the Supreme Court in *Anant R. Kulkarni v. Y.P. Education Society and Others, (2013) 6 SCC 515* and submitted that the charges should be specific and definite and if the charges are vague, no inquiry can be sustained on such a charge sheet.

11. Coming to the first argument of the Petitioner and examining the same in light of the judgment of the Supreme Court in *Anant R. Kulkarni (supra)*, there can hardly be any dispute on the proposition of law that the charges framed against a delinquent employee must be clear, specific and definite so that the employee knows exactly what allegations he is required to meet and accordingly prepare his defence.

In this context, I may refer to paras 15 and 16 of the said judgment, which are rightly relied upon by the counsel for the Petitioner and

which are extracted hereunder:-

“15. In Surath Chandra Chakrabarty v. State of W.B. [(1970) 3 SCC 548 : AIR 1971 SC 752] this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under : (SCC p. 553, para 5)

“5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.”

(emphasis supplied)

16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. (Vide State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454 : 1986 SCC (L&S) 662 : AIR 1986 SC 995] , U.P. SRTC v. Ram Chandra Yadav [(2000) 9 SCC 327 : 2001 SCC (L&S) 79 : AIR 2000 SC 3596] , Union of India v. Gyan Chand Chattar [(2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] and Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank [(2011) 14 SCC 379 : (2012) 2 SCC (L&S) 926] .)”

12. In order to test this argument of the Petitioner, the charge memorandum dated 01.02.2018 would require to be examined. The Articles of Charge along with statement of imputation of misconduct are extracted hereunder, for ready reference:-

“Statement of Articles of Charge framed against Shri Palash Goswami, Director (Finance), Hindustan Paper Corporation Limited (HPC), Kolkata, West Bengal

Articles of Charge

Article-I

That an amount of Rs.100 crore was released for implementaion of part revival plan of NPPC by the Government of India, Department of Heavy Industry vide the sanction order No. 8(37)/2009-PE VII dated 19.09.2013 and it is alleged that a part of the fund was diverted by HPC for purpose/(s) other than those mandated in the Sanction.

That even though the alleged diversion of fund is stated to have been done prior to the joining of Shri Palash Goswami as Director (Finance) in HPC and Shri Palash Goswami had brought out the fact of ‘only Rs.3.25 crore remaining in the bank account of HPC against the reciept of Rs.100 crore’ on the date of his joining the HPC, he as Director (Finance), HPC failed to point out the violation of the conditions of the above mentioned Sanction dated 19.09.2013 and also failed to bring the facts relating to already diverted funds to the notice of Competent Authorities in the Department of Heavy Industry.

By aforesaid acts of commission and omission, Shri Palash Goswami, Director (Finance) failed to maintain devotion to duty and acted in a manner unbecoming of a Public Servant and thereby contravened Rule 4(a) (ii) & (iii) and violated Rule 5 (vi), (x) and (xxxvi) of Hindustan Paper Corporation Conduct, Discipline and Appeal Rules, 1974.

Article-II

That Shri Palash Goswami, Director(Finance), HPC failed to bring to the notice of concerned authorities in Department of Heavy Industries that HPC has taken a commission from NPPC, despite there being no provision for commission for HPC in the sanction order no. No. 8(37)/2009-PE VII dated 19.09.2013 of the Government of India, Department of Heavy Industry and thereby violated the conditions of the sanction order.

By the said action, it is alleged that Shri. Palash Goswami, Director(Finance), HPC has failed to adhere to the conditions of the sanction order issued by the Department and has thereby failed to maintain absolute integrity and exhibited lack of devotion to duty and also acted in a manner unbecoming of a Public servant by

violating Rule 4(a) (i), (ii) &(iii) and Rule 5 (vi), (x) and (xxxvi) of the Hindustan Paper Corporation Conduct, Discipline and Appeal Rules, 1974 and also allegedly not following financial prudence and norms of corporate management as well as norms for dealing with Government of India money by ensuring functional system checks and balances during the period.

Article- III

That an amount of Rs. 100 crore released to HPC by Government of India, Department of Heavy Industry vide sanction No. 8(37)/2009-PE VII dated 19.09.2013 for carrying out part revival of NPPC, Nagaland have been allegedly diverted and while reporting the same to the Government, different figures for the amount diverted have been intimated by officers of HPC and also the purpose for which the amount of Rs. 100 crore has not been released has not been reported clearly and categorically. That such inaccurate reporting by Finance wing , which was being headed by Shri Palash Goswami, Director (Finance) from 4.11.2014 to 1/8/2016 (date of suspension) displays negligence and lack of devotion to duty of Finance division of HPC.

By the said action/inaction of the Finance wing, it is alleged that Shri Palash Goswami, Director (Finance) has failed to maintain devotion to duty and has acted in a manner unbecoming of a Public Servant and thereby contravened Rule 4(a), (ii) &(iii) and Rule 5 (vi), (x) and (xxxvi) of the Hindustan Paper Corporation Conduct, Discipline and Appeal Rules, 1974.

Statement of Imputation of misconduct or misbehaviour in support of charge framed against Shri Palash Goswami, Director (Finance), Hindustan Paper Corporation Limited (HPC), Kolkata, West Bengal

Article-I

An amount of Rs. 100 crores was sanctioned to HPC for Implementation of part revival plan of NPPC by the Government of India, Department of Heavy Industry vide the order No8(37)/2009-PE-VII dated 19.09.2013. The following conditions were included in the sanction letter:-

Para 3 :-No funds will be diverted under any circumstances and CMD, HPC will be held responsible for any diversion or misappropriation of funds.

Para 4:- CMD, HPC shall be personally responsible for proper utilization of these funds.

Para 5:- CMD, HPC shall be personally responsible for compliance with provisions of the Company Act.

The Government of India, Department of Heavy Industry released Rs. 100 crore to HPC, the parent Company for part revival Of NPPC on 19.09.2013 (received by HPC on 21.09.2013). At that time Shri M.V. Narasimha Rao was the CMD, HPC and Shri

Amitabha Banerjee was the Director (Finance) HPC. Subsequently, from 05.10.2013 due to relieving of Shri Amjtabha Banerjee ,the then CMD, HPC was also given the additional charge of Director (Finance) of HPC and he continued to hold the same, till the joining of Shri Palash Goswami on 04.11.2014. Shri Palash Goswaml joined Hindustan Paper Corporation Limited (HPC) as Director(Finance) on 04.11.2014 for a period of five years.

It has been alleged that funds sanctioned by Government of India vide order dated 19.09.2013 to HPC for part revival of NPPC have been diverted. The present CMD, HPC has mentioned that out of Rs.100 crores released by DHI for NPPC, Rs.32.05 crores has been spent during 2014-15 for the use in the exigencies of HPC and the rest Rs.67.95 crores has already been either transferred to NPPC or payment has been made to NPPC vendor directly from HPC, Hence, the amount of Rs.32.05 crores has been diverted by HPC for the purposes not mandated as per the sanction order dated 19.9.2013.

Although, Shri Palash Goswami had brought out the fact that only Rs. 3.25 crore were remaining in the bank account of HPC on the date of his joining HPC, however, the alleged diversion of funds which was done prior to his joining as Director (Finance), should have been brought to the notice of Competent Authorities in DHI by Shri Palash Goswami, which he failed to do so.

Thus, Shri Paiash Goswami has allegedly failed to timely bring the information about the said alleged diversion and violations of conditions of the sanction orderdated 19.09.2013 to the notice of Competent Authorities in Department of Heavy Industry. By aforesaid acts, Shri Palash Goswami. Director (Finance) failed to maintain devotion to duty and has acted in a manner unbecoming of a Public Servant and thereby contravened Rule 4(a) (ii) &(iii) & Rule 5 (vi), (x) and (xxxvi) of the Hindustan Paper Corporation Conduct, Discipline and Appeal Rules, 1974.

Article-II

An amount of Rs. 100 crores was sanctioned to HPC for implementation of part revival plan of NPPC by the Government of India, Department of Heavy Industry vide the order No8(37)/2009-PE-VII dated 19.09.2013 There was no provision for commission for HPC in the sanction order dated 19.09.2013 of the Government ofIndia, Department of Heavy Industry. It is alleged that HPC have taken a commission from NPPC which has been reflected in audited balance sheet of NPPC. Thus, HPC violated the conditions of above sanction letter. HPC have allegedly not obtained the approval of the Competent Authorites before seeking the approval of Board of Directors of the Company, Shri Palash Goswami, Director (Finance) should have also brought the above alleged violation of the conditions of sanction order dt. 19.09.2013 to the notice of the concerned authorites.

By aforesaid acts, Shri Palash Goswami, Director (Finance) failed to maintain aboslute integrity, devotion to duty and acted in a

manner unbecoming of a Public Servant and thereby contravened 4(a) (i), (ii) &(iii) & Rule 5 (vi), (x) and (xxxvi) of the Hindustan Paper Corporation Conduct, Discipline and Appeal Rules, 1974.

Article-III

An amount of Rs. 100 crore released to HPC by Government of India, Department of Heavy Industry vide sanction No. 8(37)/2009-PE VII dated 19.09.2013 for carrying out part revival of NPPC, Nagaland have been allegedly diverted. However, while reporting the same to the Government different figures for the amount diverted have been intimated by officers of HPC. At one stage amount of Rs.67.95 crore has been shown as utilized for NPPC and the rest amount i.e. Rs.32.05 crore have been reported as diverted, while at the time of converting the funds into equity in favour of NPPC only an amount of Rs.47.70 crore have been shown as utilized for the project meaning thereby that balance amount have been diverted. The purpose for which released amount of Rs. 100 crore except Rs.47.70 crore have been utilized has not been reported clearly and categorically.

The role of Director (Finance), HPC is primarily to follow financial norms and General Financial Rules and the Instructions issued by the Government of India and HPC from time to time and to maintain the official records relating to the funds released by Government of India and also bring any deviating from the above and from the conditions of sanction orders issued by Government of India to the competent authorities including audit parties. Mr.Palash Goswami, Director (Finance) should have made all the efforts to streamline the working of Integrated Financial Wing of HPC. He also has failed to do so.

By the said action/inaction of the Finance wing, it is alleged that Shri Palash Goswami, Director (Finance) has failed to maintain devotion to duty and has acted in a manner unbecoming of a Public Servant and thereby contravened Rule 4(a), (ii) &(iii) and Rule 5 (vi), (x) and (xxxvi) of the Hindustan Paper Corporation Conduct, Discipline and Appeal Rules, 1974.”

13. On a perusal of the Articles of Charges and the statement of imputation, this Court is of the opinion that the contention of the Petitioner that the charges are vague, is untenable and cannot be accepted. There is absolutely no ambiguity in the allegations which are well-narrated in the Articles of Charges with a further elaboration in the statement of imputation. From a bare reading of the charge memorandum, it cannot be held in favour of the Petitioner that the allegations are not specific or definite so as to form the basis of a

disciplinary inquiry and therefore the judgment of the Supreme Court in *Anant R. Kulkarni (supra)* would not inure to the benefit of the Petitioner. It is a well-settled proposition of law that charge sheet is not an inquiry report and is only a gist of the allegations *albeit* the allegations must be clear and specific. Charges are broadly framed disclosing to the delinquent employee the gist of allegations against him and need not contain all the details and particulars to the minutest detail. Articles of charges read with statement of imputation are to my mind clear and specific so as to indicate the allegations which the Petitioner is required to meet and defend.

14. Insofar as the second ground of challenge that the allegations levelled in the charge memorandum are false and/or it was the Petitioner who as a whistle blower reported the diversion of funds which had taken place prior to his joining and it is impossible that he could be held guilty of the diversion is concerned, the correctness or truth of the allegations cannot be gone into by the Court at this stage, when the inquiry is pending. Power of judicial review of the High Court under Article 226 of the Constitution of India is only exercised to ensure that the decision making process by the Competent Authority is in consonance with the Statutes and/or the Rules in force and the decision itself is not amenable to a judicial review. Interference of the High Court in the inquiry proceedings at the stage of charge sheet is far more restricted and circumscribed by many fetters and at this stage, Court can interfere in a disciplinary proceeding interdict the inquiry on very limited grounds. In this context, I may refer to observations of the Supreme Court in *Union of India v. Upendra Singh, (1994) 3 SCC 357:-*

“6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the

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

“Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.””

15. In ***Union of India v. Kunisetty Satyanarayana***, (2006) 12 SCC 28, the Supreme Court held that discretion under Article 226 should not ordinarily be exercised by quashing a charge sheet and the interference may be warranted only in very rare and exceptional cases, where the charge sheet or the show cause notice is found to be wholly without jurisdiction or for some other reason wholly illegal. It was also held that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition is premature. A mere charge sheet or show cause notice does not give rise to any cause of action as it does not amount to an adverse order which affects the right of any party. It is possible that after considering the reply to show cause or holding an inquiry, the authority concerned may drop the proceedings and/or hold

that the charges are not established. A writ petition lies only when some right of a party is infringed and a show cause or a charge sheet does not infringe the right of anyone. Relevant paras are as under:-

“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghose [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

16. To the same effect is the earlier decision of the Supreme Court in ***Union of India v. Ashok Kacker, 1995 Supp (1) SCC 180***, relevant paras of which are as follows:-

“4.In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it

necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

17. In ***State of Orissa v. Sangram Keshari Misra, (2010) 13 SCC 311***, the Supreme Court held as follows:-

"10. 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 v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] SCC p. 362, para 6). Therefore we reject the contention that the charge ought to have been quashed without reserving to the State to proceed in accordance with law."

18. It would be profitable to refer to the judgment of the Supreme Court in ***Secretary, Ministry of Defence v. Prabhakar Chandra Mirdha, (2012) 11 SCC 565***, relevant paras of which are as under:-

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagaappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(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."*

19. Relevant would it be to refer to a recent judgment of a Division Bench of this Court in ***N.D. Tyagi v. Power Finance Corporation Ltd. and Others, 2022 SCC OnLine Del 2291***, where relying on all the aforesaid judgments and going into the charge sheet, the Division Bench concluded that the charges were not vague/absurd and it is not open to the Courts at the stage of charge sheet to interfere, save and except, in rare and exceptional cases. Relevant paras are as follows:-

"23. The aforesaid charges make it very clear that the charges are not vague/absurd charges and it is the employer who has to establish charges based upon the evidence.

24. The present case is a case where the validity of the charge sheet is under question. The Apex Court in the case of Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, in paragraphs 13, 14, 15 and 16 has held as under:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467], Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639], State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is

quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

25. Therefore, as the charges are not vague, the charge sheet has been issued by the competent disciplinary authority, the question of interference by this Court, at this stage, does not arise. Resultantly, this Court does not find any reason to interfere with the order passed by the learned Single Judge. The appeal is accordingly dismissed.”

20. From the conspectus of the aforesaid judgments, the legal position that clearly emerges is that ordinarily a writ Court would not interfere in disciplinary proceedings at the stage of charge sheet and in case of any grievance, the delinquent employee may raise the issues during the inquiry proceedings before the Competent Authority and wait for the decision of the disciplinary authority thereon. It is only in rare cases that the Court may interfere as for instance where the charge sheet is without jurisdiction not having been issued by the Competent Authority. Since this Court has not found that the charges are vague or unclear and it is not the case of the Petitioner that the charge sheet is issued without jurisdiction, this Court sees no reason, in the light of the settled law to interfere at this stage of the disciplinary proceedings to quash the charge sheet.

21. It is undisputed that inquiry proceedings had progressed to a certain stage when the interim order was passed by this Court on

21.12.2018 staying further proceedings. In view of the settled law, this Court deems it appropriate to permit Respondent No. 1 to continue with the disciplinary proceedings and needless to state that the Petitioner will be given complete opportunity to defend the charges and prove his innocence. No case has been made out by the Petitioner to continue with the stay order and interdict the inquiry proceedings.

22. At this stage, counsel for the Petitioner submits that the charge sheet was issued way back in 2018 and five years have elapsed since the matter is pending and therefore directions be issued for a time bound completion of the inquiry so that the harassment of the Petitioner comes to an end. He further submits that DoPT has issued several O.Ms. from time to time laying down schedules for holding departmental inquiries so that they are completed within a time bound frame.

23. This Court does find merit in this submission of the counsel for the Petitioner. It is true that DoPT has through its O.Ms. issued from time to time repeatedly asserted that departmental inquiries should not be prolonged as they do prejudice both the employer and the delinquent employee and in furtherance thereto schedules have been laid down for completion of every stage of the departmental inquiry. It is therefore directed that the departmental inquiry will be completed by Respondent No. 1 without undue delay and as expeditiously as possible giving opportunity to both sides to present their evidence and arguments. It is also made clear that this Court has not expressed any opinion on the merits of the charge sheet or the inquiry proceedings which shall proceed uninfluenced by any observation in the present judgment.

24. Mr. Kirtiman Singh, learned counsel appearing for Respondent No. 1 submits that since inquiry proceedings have been stayed, the

department was unable to proceed in the matter and in the meantime the Petitioner has superannuated and thus the factum of retirement of the Petitioner should not come in the way of the Respondents continuing the inquiry proceedings. This Court entirely agrees with the submission of Mr. Singh. It is a settled law that where charge sheet is issued against an employee prior to his retirement, the disciplinary proceedings can be continued by the employer post the retirement of the employee as if he had not retired. Even otherwise, it was the Petitioner who had sought an interim order staying the inquiry proceedings and therefore it would not be open to the Petitioner to obstruct the inquiry proceedings on ground of his superannuation.

25. Writ petition being W.P.(C) 13926/2018 is accordingly dismissed with the pending applications. Stay granted by the Court vide order dated 21.12.2018, is hereby vacated.

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26. In view of the dismissal of the writ petition being W.P.(C) 13926/2018, no orders are required to be passed in the Contempt Petition and the same stands disposed of along with the pending application.

JYOTI SINGH, J

MAY 16, 2023/kks/shivam