



2024:DHC:2632



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

% **Reserved on : 5th January, 2024**
Pronounced on: 3rd April, 2024

+ W.P.(C) 11118/2022, CM APPL. 32635/2022, CM APPL. 730/2023, CM APPL. 48492/2023, CM APPL. 52667/2023 and CM APPL. 55905/2023

RAKESH MOHAN AGARWAL Petitioner

Through: Mr. A.K. Singla, Senior Advocate,
Mr. Rahul Shukla, Mrs. Bachita Barua Shukla, Mr. Ramandeep Singh, Ms. Sayantani Basak, Mr. Akshit Sachdeva and Mr. Akash Jandial, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Apurv Kurup, CGSC for Union of India.
Mr. Ravinder Agarwal and Mr. Lekh Raj Singh, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition has been filed under Article 226 and 227 of the Constitution of India seeking following reliefs:

“i) issue writ of mandamus/certiorari or any other writ/directions to set-aside/quash Respondent No.1 (DoT)’s Memorandum dated 28.06.2022 and Letter dated 30.06.2022 (Annexure-A); and



- ii) *issue writ of mandamus/certiorari or any other writ/directions to direct the respondent no.1 to produce the communication dated 03.06.2022 addressed by respondent no.1 to respondent no.2; and*
- iii) *issue writ of mandamus/certiorari or any other writ/directions to set-aside/quash respondent No. 2 (CVC)'s Office Memorandum dated 17.06.2022 (Annexure-B); and/or*
- iv) *pass such other writ(s), order(s) or direction(s) considered just fit, proper and expedient in the facts and circumstances of the case."*

FACTUAL MATRIX

2. The petitioner ("petitioner CMD" hereinafter) was appointed at the post of 'Chairman & Managing Director' with the respondent no.1/Indian Telephone Industries Limited ("ITI" hereinafter) which is a Central Public Sector Enterprise ("PSE" hereinafter).
3. The tenure of the petitioner CMD commenced from 14th October, 2019 and his date of superannuation was 30th June, 2022. The terms and conditions of services (entitlement to leave, contribution to PF and Gratuity as per the PSE rules) were communicated to the petitioner *vide* a letter dated 18th March, 2021 issued by the respondent no.1 ("Department of Telecom" hereinafter).
4. On 10th June, 2020, the GM (CM & PP) approved the 'Request for Proposal' for appointment of a 'Project Management Agency' ("PMA" hereinafter) in order to rollout Telecom & IT Networking Projects. Pursuant to the aforementioned rollout, the Department of Telecom received a single bid by one M/s Ishan Infotech Ltd., *vide* note-sheet dated 28th July, 2020 and was opened and evaluated by the financial and technical committee deputed in such regard.



5. Thereafter, a 3-Member High-Level Price Negotiation Committee was constituted in order to negotiate the rates provided by M/s Ishan Infotech Ltd., Subsequently, after several negotiations a 'Letter of Intent' dated 8th September, 2020 was issued by the GM (CM & PP) thereby, appointing M/s Ishan Infotech Ltd. as the PMA.
6. The engagement of M/s Ishan Infotech Ltd., as the PMA for Telecom & IT Networking Projects was intimated to the GM(NSU) by the GM (CM & PP) *vide* an Inter-Office Note dated 12th September, 2020.
7. Pursuant to the abovesaid, the NSU head issued a specific Letter of Intent dated 18th September, 2020, to M/s Ishan Infotech Ltd., for completion of the preparatory activities of the newly approved Army Static Switched Communication Network Phase-IV("ASCON-IV" hereinafter) project.
8. On 27th November, 2020, a specific Purchase Order ("PO" hereinafter) for Rs. 70 crores was issued to M/s Ishan Infotech Ltd., with directions to furnish a Performance Bank Guarantee ("PBG" hereinafter) for an amount equivalent to 5% of the PMA charges within a time frame of fifteen days. Furthermore, owing to the issuance of an order dated 12th November, 2020, the PMA submitted a PBG at 3% of the PO value i.e., 70 crores.
9. Subsequently, on 9th February, 2021 the full Board of ITI in its 457th Board Meeting ratified the engagement of the aforementioned PMA for the execution of the ASCON-IV project.
10. On 3rd August, 2021, the Chief Vigilance Officer of the ITI forwarded a complaint dated 11th March, 2021, to the Chief Vigilance



Officer of the Department of Telecommunications, filed by one Sh. M.H. Venugopal regarding the appointment of the PMA and their granting of work to the ASCON-IV project.

11. The Department of Personnel & Training *vide* Ref. F. No. A-11013/1/2021 dated 4th April, 2022, advertised a Vacancy Circular for the post of Administrative Member in the Central Administrative Tribunal (“CAT” hereinafter). The petitioner CMD *vide* an application dated 25th April, 2022, applied for the said post, in furtherance to which the Department of Telecom, sought vigilance clearance from its Chief Vigilance Officer *vide* communication dated 27th April, 2022.

12. Thereafter, based on the recommendations by the aforementioned Vigilance Officers and approval by the competent Disciplinary Authority, the matter was referred to the respondent no. 2/Central Vigilance Commission (“respondent Commission” hereinafter) on 3rd June, 2022.

13. The respondent Commission *vide* its Office Memorandum dated 17th June, 2022, bearing No.022/P&T/016, granted a ‘First Stage Advice’ to the Department of Telecom and advised the competent Disciplinary Authority i.e., Minister of Communications to initiate major penalty Proceedings against the petitioner CMD and six other. Relevant extracts of the said memorandum is as under:

“....Office Memorandum

Sub: Seeking First Stage Advice by DoT in respect of Shri R. M. Agarwal & other officers of ITI, in connection with alleged irregularities committed in appointment of PMA, M/s. Ishan Infotech Ltd, and award of work for ASCONIV Project to the said PMA.

The undersigned is directed to refer to Department of Telecommunications (DoT) reference No 3-1/IT1/2021-



V.M.I dated 03.06.2022 on the above mentioned subject and to inform that the Commission has perused the vigilance report & the documents submitted therewith. Based on the facts brought out in the report, circumstances of the case & considering the gravity of the irregularities which resulted in awarding work of higher value to a vendor having lower network and doubtful integrity, the Commission advises as under:

S.No	Name and Designation of the Officers	Advice of the Commission
1.	Shri Rakesh Mohan Agarwal CMD ITI Ltd.	Initiation of Major Penalty Proceedings
2.	Shri Rajeev Srivastava, Director (F)	Initiation of Major Penalty Proceedings
3.	Sh. Shashi Prakash Gupta, the then Director HR	Government Displeasure & future ban from employment under Govt. of India
4.	Smt.S Jayalakshmi, the then DGM	Initiation of Major Penalty Proceedings
5.	Shri Santosh Kumar Sinha, the then CM-PP	Initiation of Major Penalty Proceedings
6.	Shri Arun Kumar V, the then AFM(T)	Initiation of Major Penalty Proceedings



7.	<i>Shri Murli Mohan TVB, the then DGM</i>	<i>Initiation of Major Penalty Proceedings</i>
8.	<i>Shri K Sasidharan, the then GM</i>	<i>Government Displeasure & future ban from employment under Govt. of India</i>
9.	<i>Shri V K Sharma, the then DGM</i>	<i>Government Displeasure & future ban from employment under Govt. of India</i>

2. In the article of charges, there are reference to violations of provisions of CCS (Conduct) Rules, 1964 while the officers/officials borne on the strength of ITIL are governed by their CDA Rules. Therefore, CVO, DoT is also advised to ensure that the disciplinary proceedings are initiated as per applicable Rules and complete the proceedings in a time bound manner as indicated below:

<i>S.No.</i>	<i>Stage of Disciplinary action</i>	<i>Time Limit</i>
1.	<i>Issue of chargesheet and appointment of IO and PO</i>	<i>Immediately in case of Shri Rakesh Mohan Agarwal, CMD ITI Ltd. as he is retiring on 30.06.2022. For others</i>



		<i>the entire process may be concluded by 15.08.2022.</i>
2.	<i>Conducting departmental inquiry and submission of report by the Inquiry Officer (I.O.)</i>	<i>By 15.02.2023.</i>
3.	<i>Overall additional time for all/any of the above stages of disciplinary proceedings, due to some unavoidable/unforeseen circumstances.</i>	<i>In addition to the above time limit, a period of 1 more month may be taken upto 15.03.2023.</i>

3. CVO, DoT is also advised to get the systemic improvements suggested by him at para 10 of its report implemented by ITIL and submit the status within a period of three months.....”

14. In furtherance of the aforementioned office memorandum, the Minister of Communications issued the RDA dated 3rd June, 2022, bearing No.3-1/ITI/2021-VM.I.

15. Subsequently, the Department of Telecom issued an Office Memorandum dated 28th June, 2022, thereby, proposing to hold an inquiry against the petitioner CMD. In furtherance to the same the Department of Telecom issued a letter dated 30th June, 2022, whereby the petitioner CMD was informed about the effect on his entitlement to retiral



benefits and dues due to the issuance of the Office Memorandum dated 28th January, 2022. Relevant extracts of the Memorandum dated 28th June, 2022, and letter dated 30th June, 2022 are as under:

“...MEMORANDUM DATED 28TH JUNE, 2022.

The President proposes to hold an inquiry against Shri Rakesh Mohan Agarwal, (DoB-20.06.1962), presently working as CMD, ITI Limited, Bengaluru, Karnataka under Rule 26 of Conduct, Discipline and Appeal rules, (CDA Rules) 1975. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-II). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & Annexure-IV). A copy of the first stage advice of CVC vide OM NO-022/P&T/016/516281 dated 17.06.2022 for instituting major penalty proceedings against Shri Rakesh Mohan Agarwal, is also enclosed.

2.Shri Rakesh Mohan Agarwal is directed to submit within fifteen days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3.He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4.Shri Rakesh Mohan Agarwal is further informed that if he does not submit his written statement of defence on or before the date specified in Para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 26 of Conduct, Discipline and Appeal rules, (CDA Rules) 1975 or the orders/directions issued in pursuance of the said Rule, the Inquiring Authority may hold the inquiry against him ex-parte.



5.Attention of Shri Rakesh Mohan Agarwal is invited to Rule 18 of the CDA Rules, 1975 under which no employee shall bring or attempt to bring any outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service in the company. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Rakesh Mohan Agarwal is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 18 of the CDA Rules, 1975.

6.Receipt of this Memorandum shall be acknowledged by Shri Rakesh Mohan Agarwal....”

“..Letter to Director (HR) dated 30.06.2022

Subject: Superannuation of Sh. Rakesh Mohan Agarwal, Chairman and Managing Director (CMD), ITI Limited - regarding.

Vide this Office letter of even No. dated 30.06.2022, notification regarding superannuation of Sh. Rakesh Mohan Agarwal, CMD, ITI Limited w.e.f. 30.06.2022 (A/N) has been issued (copy enclosed),

2.It may be noted that disciplinary proceedings have been initiated agsint Sh. Rakesh Mohan Agarwal prior to his superannuation and are continuing on date. The payment of terminal dues and any other service benefits may be regulated accordingly....”

16. Aggrieved by the aforementioned Office Memorandums dated 17th June, 2022 and 28th January, 2022 and letter dated 30th June, 2022, the petitioner CMD has preferred the instant petition seeking setting aside/quashing of the same on being violative of his legal, fundamental, and constitutional rights guaranteed under Articles 14, 16, 19(1)(g), 21 and 300-A of the Constitution of India.



PLEADINGS

17. The petitioner CMD filed the instant writ petition on 21st July, 2022 and submitted the below stated arguments:

“....A. Because the respondent No. 1 (DoT)’s Memorandum, dated 28.06.2022 and Letter, dated 30.06.2022 alongwith respondent No. 2 (CVC)’s Office Memorandum, dated 17.06.2022 are in violation of petitioner’s legal, fundamental and constitutional rights guaranteed by Articles 14, 16, 19(1)(g) and 21 alongwith Article 300-A of the Constitution of India.

B. Because while issuing memorandum dated 28.06.2022, petitioner has been picked in discriminatory manner and many other officers fully involved in proposing the award of PMA work and responsible in collective decision making, namely, the then GM(T), GM (CS), GM (NSU), Director (Production) and also presently holding the additional charge of CMD of ITI Ltd. have not been advised for any action by respondent no.2 (CVC).

C. Because Hon’ble Supreme Court in case titled “Bongaigaon Refinery Petrochemicals Ltd. & Ors. vs. Girish Chandra Sarma” reported as 2007 (7) SCC 206 vide para 16 while dealing with case of departmental inquiry concluded that “one person alone cannot be made scapegoat for collective decision on which other members also collectively participated”.

X X X X

H. Because the reliance of statement of two former employees are in violation of Office Memorandum No. 11013/4/88 Estd. A dated 19.04.1988 issued by DoPT which mandates to keep the written record of the policy decision taken by various govt. functionaries, when action in this regard is to be initiated on the basis of oral instructions given by senior officers.



I. Because the alleged charge of ‘overlooking and failing to appreciate the advice’ of subordinate formation by the officer in commanding position has nowhere been substantiated to be proved based on the statements of Imputations at Annexure-II to Memorandum of Charges (attached herewith as Annexure-A). The whole case has been woven based upon the false statements of two retired officers who worked at the relevant time as GM (CM & PP) & GM(CS), victimizing the petitioner with alleged misconduct.

J. Because the GM (CM & PP), approved the publication of RFP dated 10.06.2020 with an intent to enhance the capacity of ITI Limited to deliver and serve the potential customers and to rollout of Telecom & IT Networking Projects. The said RFP nowhere prescribes a financial limit of 100-120 Cr or name of NMDC project as sated in Annexure-II to the Memorandum of Charges. GM (CM & PP), while describing the details of negotiating with the PMA bidder in file has indicated the opportunity of high value projects including ASCON. The LOI issued and signed by GM (CM & PP), nowhere puts any fetter on the type of projects or financial limits except that the project has to be of the nature of “Telecom & IT Networking”. GM (CM & PP), having known the responsibility of ASCON-IV with NSU cell, did ask NSU to use services of PMA on need bases.

K. Because GM (CM & PP) never gave any advice or suggestion to the petitioner or any other senior functionaries of CPSU, seeking their approvals at the instances of (i). Single bid opening (ii). Setting up highpowered financial PNC or (iii). Approval of PMA with regards to the limitation on size of projects or the financial limits, the allegation on petitioner, overlooking and failing to appreciate that a generic PMA was selected for projects worth Rs. 100-120 Cr. is wholly imaginary and needs immediate quashing.

X X X X



M. Because grant of advice for initiation of Disciplinary Proceedings against a Board level employee in Public Sector Enterprise by respondent no.2 is in the nature of quasi-judicial proceeding and while giving first stage advice dated 17.06.2022 the rule of natural justice has been violated..... ”

18. In response to the present petition, the respondent no.1 has filed the counter affidavit dated 6th January, 2023, wherein, the contentions advanced in the present petition are opposed by way of the following arguments:

“...4. That, in so far as the Answering Respondent Is concerned, the present petition impugns OM dated 28.06.2022 issued by the Answering Respondent to the Petitioner ("Impugned Charge Memorandum") proposing to hold an inquiry against him under Rule 26 of the Conduct, Discipline and Appeal Rules, 1975 ("CDA Rules, 1975"). Further, the petition also impugns a letter dated 30.06.2022 addressed by the Answering Respondent to Indian Telephone Industries Limited ("ITI Ltd.") informing them that disciplinary proceedings had been initiated against the Petitioner prior to his superannuation which are currently pending and therefore, the payment of terminal dues and any other service benefit to the Petitioner would have to be regulated accordingly.

5. That, therefore, it is humbly submitted that as a matter of settled law, no writ lies against a charge sheet or show-cause notice and hence, the present petition is liable to be dismissed as the same is misconceived and is not maintainable before this Hon'ble Court .

X X X X

12. That, therefore, there commendations of the CVO, ITI Ltd. as well as the recommendations of the CVO, DoT on the same were considered and approved by the Petitioner's



competent Disciplinary Authority and thereafter the case was referred to the Central Vigilance Commission, Respondent No.2 ("CVC") on 03.06.2022.

X X X X

14. The. competent disciplinary authority i.e. Hon'ble Minister of Communication accepted the .Central Vigilance Commission advice and accordingly RDA No. 3-1/ITI/2021-VM.1 dated 23.06.2022 was issued. That, accordingly, the decision to issue the Impugned Charge Memorandum and to initiate an inquiry against the Petitioner under Rule 26 of the CDA · Rules, 1975 was validly taken.... ”

19. The respondent no. 2 has also filed its counter affidavit dated 6th January, 2023, submitting the following arguments:

“...4. That in the present case, the Commission received a proposal from the Department of Telecommunications (Dot for short), regarding alleged irregularities committed in appointment of PMA- M/s Ishan Infotech Ltd., and award for ASCON IV Project to the said PMA.

5. That after perusal of the Vigilance report of the CVO, DoT, and documents submitted therewith, and taking into account the totality the facts and the gravity of the irregularities, the Commission vide its OM dated 17.06.2022, advised initiation of Major Penalty proceedings against the Petitioner and six other officers of ITI Ltd.

6. That it is also pertinent to point out the Section 15 of the CVC Act, provides that, “No suit, prosecution or other legal proceedings shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.” The Parliament has thus conferred immunity on the Commission in respect of all its actions,



done in good faith in furtherance of the objectives of the Act....”

20. The petitioner CMD has filed his written submissions dated 21st October, 2023, submitting the below extracted arguments:

“...B. STATUS OF PETITIONER

(i) Petitioner held status of Chairman & Managing Director of ITI Limited at the time of issue of respondent no.1’s OM dated 28.06.2022 and respondent no.2’s OM dated 17.06.2022.

(ii) Above memorandums seek to initiate inquiry proceedings under Rule 26 of the Conduct, Discipline and Appeal Rules, 1975 of ITI Limited by invoking contravention of Rule 4 of the above Rules.

(iii) Petitioner superannuated from service on 30.06.2022 and aforesaid memorandum was served/delivered on 28.06.2022 i.e. around 48 hrs. before his attaining superannuation.

(iv) Petitioner did not have entitlement either to gratuity or to leave encashment dues upon superannuation.

C. NON-MAINTAINABILITY OF INQUIRY PROCEEDINGS

(i) Ex-facie proceedings are illegal, without jurisdiction & competence.

(ii) Neither Rule 26 nor Rule 4 of CDA Rules 1975 of ITI Limited apply to petitioner.

(iii) Petitioner is not covered under definition of “Employee” covered by Rule 3(a) of the Rules.

(iv) Petitioner is defined vide Rule 3(b), (c) and (d) of the Rules, empowered to exercise power vide Rule 40 to



interpret the rules; vide Rule 41 to amend, modify, alter or add to the Rules; vide Rule 34 to hold and institute independent inquiry in respect of any misconduct by any employee; vide Rule 33A to act as Appellate Authority for proceedings covered by CDA Rules.

(v) Prohibitions that apply to petitioner under CDA Rules 1975 are prescribed in Rule 15A (i) to (iii), Rule 20 and 42 of the Rules.

- ❖ *Perusal of imputations framed vide Article 1 (Pg. 35 of wp) is to “assignment of ASCON-IV project worth Rs. 2800 Cr. to the Generic Project Management Agency (PMA), On the documents produced with the writ petition vide N/8 & N/9 consisting of report by the High Level Price Negotiation Committee (Pg. 110-111 with typed copy at Pg. 112-113 of wp); inclusion of ASCON in scope of work to be awarded to M/s ISHAN INFOTECH is analyzed, recommended and approved by various functionaries. This report needed no concurrence of petitioner, in a way, petitioner is not a party to the report.*
- ❖ *Vide another Note at N/10 & N/11 (Pg. 128-129 of wp), scope of work & terms and conditions for ASCON-IV project for placing order to PMA is analyzed, recommended and approved by various functionaries of the company. This did not need any approval from petitioner. Petitioner is not a party to the said exercise (refer Pg. 128-129 of wp).*

X X X X

- ❖ *In support of plea of discrimination, petitioner submits that amongst the officers though party to decision making process but their names are not included for inquiry. They are: ”*

21. The respondent no. 1 has also filed on record its written submissions dated 11th October, 2023, relevant extracts of which are as under:



“...1. ISSUE

i. The present proceedings originated from a complaint dated 11.03.2021, submitted by Mr. M.H. Venugopal through the Chief Vigilance Officer ("CVO") of Indian Telephone Industries Limited ("ITI Ltd.") on 03.08.2021 (@Page 28_Rejoinder). The complaint pertains to the management of ITI Ltd. and their decisions regarding the appointment of a Project Management Agency ("PMA") for the Army Static Switched Communication Network Phase IV ("ASCON IV") Project to M/s Ishan Infotech Ltd., as well as the awarding of the ASCON IV Project work to M/s Ishan Infotech Ltd.

ii. The aforementioned complaint was forwarded to the CVO, Department of Telecommunication, along with copies of the Purchase Order ("PO") and the Letters of Intent ("LOIs") issued to M/s Ishan Infotech Ltd (@Page 114 _W.P). Subsequently, inquiry was initiated by the Respondent with the CVO of ITI Ltd.

2. INQUIRY

i. Pursuant to the afore-said inquiry, it was found that-

a. On 10.06.2020, (@Page 49-W.P) a Request for Proposal ("RFP") was issued by the Corporate PP & Marketing Division of ITI Limited for the appointment of a Project Management Agency (PMA) for Telecom & IT Networking Projects. This occurred during the tenure of Mr. Rakesh Mohan Agarwal (Petitioner), who served as CMD of ITI Limited from 14.10.2019.

b. During Petitioner's tenure as CMD of ITI Limited on 28.07.2020, he approved the opening of bids submitted by M/s Ishan Infotech Ltd. It is note-worthy to mention M/s Ishan Infotech Ltd. had primarily been appointed as the Project Management Agency (PMA) for the NMDC Project, valued at Rs 120 Crores. In accordance with the Central Vigilance Commission's guidelines, 30% of Rs. 120 Crores,



equivalent to Rs 40 Crores, was considered as the average turnover over the last three financial years, as per the Request for Proposal (RFP) dated 10.06.2020. Consequently, a composite experience was required to meet these criteria. Therefore, the Petitioner was aware that M/s Ishan Infotech Ltd. had been empaneled for projects valued between Rs. 100-120 Crores as ITI's PMA, with a fee equivalent to 2.5% of the project cost for PMA services. Subsequently, a LOI dated 08.09.2020 (@Page114_W.P), was issued to M/s Ishan Infotech Ltd., and this LOI was duly accepted by the PMA.

c. On 16.09.2020, a proposal was initiated to issue a LOI to M/s Ishan Infotech Ltd. for the ASCON IV Project, which involves laying OFC across the country for the Army's Strategic Communication Network, with an estimated cost of approximately Rs. 2800 Crores for the purpose of PMA. This proposal was subsequently approved by the Petitioner on 17.09.2020. The LOI dated 18.09.2020, outlining the tentative scope of work and excluding commercial details, was then issued to M/s Ishan Infotech Ltd., along with an advisory for the vendor to provide a presentation on various project activities on 22.09.2020.

d. On 15.10.2020, a High-Level Committee was recommended, comprising Sh. Shashi Prakash Gupta, the then Director (HR); Sh. D Venkateshwarlu, the then Director (Projects); Sh. Rajeev Srivastava, the Director (F); Ms. Ila Bahadur, the EDR (P); Lt. Sh. Satyapriya, the GM (BGP); Mr. Chiranji Lal, the GM; Sh. A K Bajoria, the GM (NS); and Sh. B R Suresh, the then GM (CS), to evaluate the scope of work for the Project Management Agency (PMA) and finalize other related conditions. This recommendation received approval from the Petitioner.

e. The committee submitted its report on 31.10.2020, which, among other things, indicated that the project cost for the PMA purposes was approximately Rs. 2800 Crores.



Subsequently, the proposal for approval to issue a PO to M/s Ishan Infotech Ltd., for PMA Services for the ASCON IV Project, along with the Committee's report, was approved by the Petitioner.

f. The High-Level Committee, which recommended the detailed scope of work and commercial aspects for the ASCON IV Project, was not informed of, nor was it specified in the Committee's objectives or mandate, that the Project Management Agency (PMA) had been appointed for projects valued only between 100-120 Crores.

g. The Petitioner, Sh. R. M Agarwal, the then CMD of ITI, along with Sh. Shashi Prakash Gupta, the then Director (HR), and Sh. Rajeev Srivastava, the Director (F), collectively held authority in both the appointment of a generic PMA for projects valued around 100- 120 Crores and the decision to award the ASCON IV Project to M/s Ishan Infotech Ltd.

3. Despite holding a commanding position within the company, the Petitioner overlooked and failed to appreciate that a generic Project Management Agency (PMA), namely M/s Ishan Infotech Ltd., originally selected for projects valued between Rs. 100-120 Crores, was entrusted with the PMA responsibilities for the ASCON IV Project, which had an estimated worth of approximately Rs. 2800 Crores.

X	X	X	X
X	X	X	X

7. The Central Vigilance Commission (CVC), in their Office Memorandum No. 022/P&T/016 dated 17.06.2022 (@Page 43_Para 15 (A)_W.P), took into account the facts highlighted in the report, examined all case records, considered the circumstances surrounding the case, and weighed the severity of the irregularities. These irregularities had led to the awarding of higher-value work to a vendor with a lower net worth and questionable



integrity (M/s Ishan Infotech Ltd. provided false and misleading experience certificates). In light of these considerations, the CVC provided the following advice:

S.No.	Name and Designation of the Officers	Advice of the Commission
1.	Shri Rakesh Mohan Agarwal CMD ITI Ltd.	Initiation of Major Penalty Proceedings
2.	Shri Rajeev Srivastava, Director (F)	Initiation of Major Penalty Proceedings
3.	Sh. Shashi Prakash Gupta, the then Director HR	Government Displeasure & future ban from employment under Govt. of India
4.	Smt. S Jayalakshmi, the then DGM	Initiation of Major Penalty Proceedings
5.	Shri Santosh Kumar Sinha, the then CM-PP	Initiation of Major Penalty Proceedings
6.	Shri Arun Kumar V, the then AFM(T)	Initiation of Major Penalty Proceedings
7.	Shri Murli Mohan TVB, the then DGM	Initiation of Major Penalty Proceedings
8.	Shri K Sasidharan, the then GM	Government Displeasure & future ban from employment under Govt. of India
9.	Shri V K Sharma, the then DGM	Government Displeasure &



		<i>future ban from employment under Govt. of India</i>
--	--	--

X	X	X	X
X	X	X	X

11. It is well settled law that 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 the 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 and show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.

12. In catena of judgements, the Hon'ble Apex Court has held that the truth or falsity of the allegations cannot be determined by a Hon'ble Court before whom enquiry proceedings are challenged at the outset and an entitlement to challenge the enquiry proceedings arises only when there is found lack of jurisdiction. The Hon'ble Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of res judicata or double jeopardy or that on the face of the show cause notice even if facts are accepted as correct no charges are made out or there is no cause of action or no violation of any law or rules etc. ...”

SUBMISSIONS

W.P.(C) 11118/2022

Page 20 of 48



(On behalf of the petitioner)

22. Learned senior counsel appearing on behalf of the petitioner CMD submitted that the respondent commission and the Department of Telecom, have violated all cannons of law, equity and justice by issuing the impugned Office Memorandums dated 17th June, 2022 and 28th January, 2022, respectively as well as letter dated 30th June, 2022.

23. It is submitted that the petitioner CMD has been handpicked in a discriminatory manner and is being made a scapegoat by the department of Telecom by issuing the Office Memorandum dated 28th January, 2022.

24. It is further submitted that several other officers namely GM(T), GM(CS), GM(NSU), Director (Productions) and the present CMD (holding additional) who were fully involved in the engagement of the PMA, have been conveniently left out and it is only the petitioner CMD against whom the inquiry in such regard has been advised.

25. It is submitted that one person alone cannot be made a scapegoat for the decision making on which other members have also collectively participated. To substantiate the same, reliance is placed upon the judgment given by the Hon'ble Supreme Court in cases titled ***Bongaigaon Refinery Petrochemicals Ltd. & Ors. Vs. Girish Chandra Sarma,¹*** and ***State of M.P vs Sheetla Sahai & Ors,²***.

26. It is submitted that the department of Telecom has violated the fundamental rights of the petitioner CMD by issuing the Office Memorandum dated 28th June, 2022, two days prior to his superannuation from the services. The said act of the department of Telecom is

¹ (2007) 7 SCC 206

² (2009) 8 SCC 617



discriminatory as the petitioner CMD is likely to face a road block by denial of clearance from the vigilance department in opportunities relating to public employment especially for the post of Administrative Member in Central Administrative Tribunal to which he applied *vide* application dated 25th April, 2022.

27. It is submitted that issuance of the impugned memorandums has severely impacted the petitioner's right to practise consultancy and carry out any professional assignment with any public officer post his retirement, therefore, depriving him of the fundamental right to live with dignity and personal liberty.

28. It is submitted that the office memorandum issued by the respondent Commission is pursuant to the report submitted by the vigilance Officer of the department of Telecom, which essentially relies upon the statements of two former employees. It is submitted that the said reliance is in contravention of the provisions of Section 91 and 92 of the Indian Evidence Act, 1872, since during their employment, they were members of the committee responsible for publishing the terms of Request for Proposal for appointment of the PMA.

29. It is submitted that the basis of the initiation of an enquiry rests upon false statements given by two former employees who held the position of GM(CM & PP) and GM(CS). It is further submitted that the alleged misconduct on account of the petitioner CMD is unwarranted as the 'Statements of Imputations', has not been able to prove the 'Memorandum of Charges' alleged to have been committed by the petitioner CMD.



30. It is submitted that the Request for Proposal for appointment of the PMA was published after having been approved by the GM(CM & PP) and the same nowhere provides a ceiling of Rs. 100 to 120 Crores or the name of the NMDC projects.

31. It is submitted that the Letter of Intent issued and signed by the GM(CM & PP) only prescribes the nature of project to be that of “Telecom & IT Networking” and nowhere bars the PMA on the type of projects or puts a financial limit. It is further submitted that the GM(CM & PP) was well aware of the responsibilities that the PMA would have to undertake to complete the ASCON-IV project hence, advised the NSU cell to use their services on a need basis.

32. It is submitted that the respondent commission has violated the principles of natural justice by granting the first stage advice *vide* Office Memorandum dated 17th June, 2022, thereby advising to initiate disciplinary proceedings against the petitioner Director who at the relevant time was a Board level employee.

33. It is submitted that the initiation of proceedings under Rule 26 of the Conduct, Discipline and Appeals Rules, 1975 (“CDA Rules” hereinafter), in contravention of Rule 4 do not apply to the petitioner Director as he is not covered under the definition of an ‘employee’ as provided under the Rule 3(a) of the CDA Rules, 1975 therefore, making the proceedings *ex-facis* illegal and without jurisdiction.

34. It is submitted that the petitioner CMD has been defined under Rule 3(b), 3(c) and 3(d) of the CDA Rules thereby, empowering him to interpret the rules as per the powers conferred to him under Rule 40 and to amend the same under Rule 41. It is further submitted that as per Rule



34, the petitioner CMD is empowered to initiate an independent inquiry against any misconduct by an employee and under Rule 33A, he is the Appellate Authority for proceedings falling within the ambit of CDA Rules.

35. It is submitted that the prohibitions applicable to the petitioner CMD are prescribed under Rule 15A(i) to (iii), Rule 20, Rule 40 of the CDA Rules and the terms of appointment at para 1.1 stipulates the appointment of the petitioner CMD to be in accordance with the provisions of the Companies Act, 2013.

36. It is further contended that the CDA Rules make a clear distinction between the 'Chairman & Managing Director' and the 'employees', wherein the former is defined under Rule 3(d) and the latter under Rule 2, therefore in light of the same the terms of para 1.15.1 of the letter of appointment which *mutatis-mutandis* applies and the CDA Rules framed by the PSE to the petitioner CMD is perverse.

37. It is submitted that providing for the expression i.e., *mutatis-mutandis* in the terms of appointment cannot mean to overshadow the definition of CMD contained in Rule 3(d) and cannot override the contents of Article 135-139 of the Articles of Association and the applicability of the provisions of the Companies Act, 2013 to the petitioner CMD as contained in para 1.1 of the letter of appointment.

38. It is submitted that the Rule 26 of the CDA Rules does not have any bearing upon the petitioner CMD as he was working as the managing director hence, no disciplinary proceedings could have been initiated by the department of Telecom since the powers to remove a Director is



governed by the provisions of Section 169 read with Section 2(54) of the Companies Act, 2013.

39. It is submitted that the Office Memorandum dated 30th June, 2022 is liable to be quashed as the petitioner CMD has been deprived of his legal entitlements to terminal dues' such as gratuity, or any other productivity linked schemes and allowance prescribed under the PSE Rules.

40. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner CMD seeks that the instant petition may be allowed, and the relief be granted, as prayed.

(on behalf of Respondents)

41. *Per Contra*, learned counsel appearing on behalf of respondents vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived and premature hence, the same, being devoid of any merit is liable to be dismissed.

42. It is submitted that it is a settled position of law that the writ jurisdiction under Article 226 of the Constitution of India cannot be exercised in a petition seeking to challenge the issuance of a charge-memo/show-cause notice as it does not give rise to any cause of action, hence the instant petition is not maintainable and is nothing but a gross misuse of process of law.

43. It is submitted that mere issuance of a charge-memo/show-cause does not amount to passing of an adverse order which affects or violates the rights of the party concerned unless the same has not been issued by the competent authority and is in excess of jurisdiction and since the impugned memorandums have been issued as per the procedure



prescribed in such regard the petitioner is precluded to allege the violation of his rights.

44. It is further submitted that a cause of action and grievance against infringement of rights of a party can be entertained only when a final order is passed thereby imposing some punishment hence, initiation of an inquiry must not be quashed by the Constitutional Courts.

45. It is submitted that the instant petition is misconceived and has been filed at a premature stage since the impugned disciplinary proceedings are still pending and are at an early stage therefore, the petitioner will have ample opportunities to make out his case on merit.

46. It is submitted that the Hon'ble Supreme Court in a catena of cases has observed that the High Courts must not decide the falsity or the truthfulness of the allegations when the inquiry proceedings are at a nascent stage unless the same suffers from lack of jurisdiction and have been wrongfully initiated by a non-competent authority.

47. It is submitted that the challenge against letter dated 30th June, 2022 is without merit as the same has been issued as per procedure and the contents of the letter stipulate the regulation of payment with regard to service benefits and terminal dues as disciplinary proceedings have been initiated against the petitioner CMD prior to his superannuation from the services.

48. It is submitted that the Office Memorandum dated 28th June, 2022 has been rightfully issued to the petitioner CMD in contravention of Rule 4 and in accordance with Rule 26 of the CDA Rules and hence the disciplinary proceedings have been initiated as per the prescribed procedure, consultations and approvals.



49. It is submitted that the petitioner CMD has wrongfully contended that he is not an employee under Rule 3(a) and is rather covered under the definition provided under Rule 3(b), 3(c) and 3(d) of the Rules. It is submitted that the said argument is flawed and arbitrary since, para 1.15.1 of his letter of appointment clearly stipulates that the CDA Rules framed by the PSE in respect of their non-workmen would also *mutatis-mutandis* apply to him with the modification being that the disciplinary authority in his case would be the President.

50. It is further submitted that the phrase *mutatis-mutandis*, is an established principle of law which implies applicability of the provisions with the necessary changes. The principles embodied in the adopted provisions are applicable and not the details with regard to a particular authority.

51. It is submitted that the petitioner CMD had accepted the terms of appointment at the time of appointment without raising any challenge to any of the terms prescribed therein hence, he is precluded from challenging the same at a belated stage.

52. It is submitted that the petitioner CMD is well covered under Rule 25 and 26 of the CDA Rules and is therefore an employee within the meaning of the Rules. It is further submitted that the petitioner's plea with regard to the applicability of the provisions of Companies Act, 2013 and para 1.1 of the terms of appointment, is untenable and against the settled position of law, i.e., the removal of a managing director under the Companies Act does not place fetters to initiate disciplinary proceedings against the managing director according to the terms of appointment.



53. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that instant petition, being devoid of any merits, may be dismissed.

ANALYSIS AND FINDINGS

54. Heard the learned counsel for the parties and perused the records.

55. The instant petitioner has approached this Court seeking an appropriate writ for quashing and setting aside of the Office Memorandums dated 17th June, 2022 and 28th January, 2022 and letter dated 30th June, 2022.

56. It is the case of the petitioner that the impugned Office Memorandums have been filed without jurisdiction as the petitioner CMD is not an employee covered under the CDA Rules. It is contended that the respondent commission has violated the principles of natural justice by granting the first stage advice *vide* Office Memorandum dated 17th June, 2022. It is further contended that the terms of appointment at para 1.1 stipulates the appointment of the petitioner CMD to be in accordance with the provisions of the Companies Act, 2013 therefore, the terms at para 1.15.1 of the letter of appointment which *mutatis-mutandis* applies and the CDA Rules framed by the PSE to the petitioner CMD arbitrary.

57. In rival submissions, the learned counsel appearing on behalf of the respondents, have contended that petitioner CMD has wrongfully preferred the instant writ petition as it is a settled position of law that the departmental proceedings or charge memorandum cannot be challenged at the nascent stage and it is only after the said proceedings having been completed can the challenge be asserted under the writ jurisdiction. It is



further contended that the terms at para 1.15.1 of the letter of appointment expressly state the applicability of the CDA Rules *mutatis-mutandis* to the petitioner CMD hence, precluding him from challenging the non-applicability of the said Rules.

58. Having heard both the parties at length, the following issues emerge before this Court for adjudication:

- *Whether a challenge seeking quashing of the charge-memo/memorandum initiating disciplinary proceedings can be preferred under the garb of a writ jurisdiction before the completion of the inquiry?*
- *Whether the petitioner CMD is stopped from questioning/challenging the terms of appointment as prescribed under the letter of appointment when he has earlier acquiesced to the same?*

59. At this juncture, it is apposite to deal with the preliminary contention raised on behalf of the respondents i.e., with regard to the non-maintainability of the instant writ petition. It is a settled position of law that the writ jurisdiction must be exercised sparingly and a challenge against the charge-memo cannot be asserted at the very initiation of disciplinary proceedings since the same does not violate the rights of the delinquent *per se*.

60. The Hon'ble Supreme Court in State of **A.P. v. Chitra Venkata Rao**³, dealt with the scope of intervention that can be exercised under Article 226 while dealing with a writ petition seeking quashing of the departmental inquiry. The relevant paragraphs are reproduced herein below:

³ (1975) 2 SCC 557



“....21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25 : (1964) 2 LLJ 150] . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the



sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjan Singh [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.”

61. The Hon’ble Supreme Court in ***Union of India v. Kunisetty Satyanarayana***⁴, again reiterated the scope of intervention in departmental proceedings under the garb of writ jurisdiction. The relevant paragraphs are reproduced herein below:

“....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

⁴ (2006) 12 SCC 28



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. ”*

62. The Hon’ble Supreme Court in ***Ministry of Defence v. Prabhash Chandra Mirdha***⁵, once again expounded the scope of preferring a writ

⁵ (2012) 11 SCC 565



petition challenging the initiation of departmental proceedings. The relevant paragraphs are reproduced herein below:

“....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] , Ulagappa 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.”

63. Upon perusal of the foregoing judicial dictum, it can be summarily stated that a charge-memo/show-cause generally cannot be a subject-matter of challenge under the writ jurisdiction, as it does not adversely affect the rights of the delinquent. As a matter of rule, neither the disciplinary proceedings, nor the charge-memo/show-cause can be quashed by the Constitutional Courts at an initial stage of the proceedings since it would be premature to deal with the asserted issues, as no legal rights *per se* have been infringed by the issuance of the aforesaid. It is appropriate for the delinquent to make out his case in the course of inquiry.

64. It is further well settled that a writ jurisdiction can only be invoked in extraordinary and exceptional circumstances. *Firstly*, when the Court *prima facie* observes that the impugned charge-memo/show-cause notice has been issued wholly without jurisdiction i.e., by an authority not competent to initiate the disciplinary proceedings. *Secondly*, it is established that there exists violation of the procedure prescribed for initiating the departmental inquiry. *Lastly*, the inquiry suffers from violation of the principles of natural justice.



65. The principles expounded in the foregoing paragraphs stems from the fact that during the course of proceedings the authority concerned may after considering the reply to the charge-memo/show-cause notice or after holding an enquiry decide to drop the proceedings altogether or hold that the charges levied against the delinquent are not established. Therefore, the writ jurisdiction under Article 226 of the Constitution has to be exercised sparingly and should not be a matter of routine.

66. Now advertent to the second limb of the consideration that need to be afforded by this Court i.e., the issue of whether acceptance of the terms of appointment by the petitioner CMD would amount to the applicability of the same thereby attracting the doctrine of acquiescence.

67. Hence, it is pertinent for this Court to highlight the yardstick followed by the Hon'ble Supreme Court and discuss the same in context to the matter at hand.

68. In its recent judgment titled *SBI v. M.J. James*,⁶ the Hon'ble Supreme Court expounded a detailed analogy with regard to the doctrine of acquiescence. The relevant paragraphs of the judgment are reproduced herein:

“....38. In Ram Chand v. Union of India [Ram Chand v. Union of India, (1994) 1 SCC 44] and State of U.P. v. Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the

⁶ (2022) 2 SCC 301



statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, paras 12-13)

“12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

‘In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and*
- (ii) any change of position that has occurred on the defendant's part.*

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his



conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt.,



(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see *Gobinda Ramanuj Das Mohanta v. Ram Charan Das*, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See *Vidyavathi Kapoor Trust v. CIT*, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See *Krishan Dev v. Ram Piari*, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See “Introduction”, U.N. Mitra, *Tagore Law Lectures — Law of Limitation and Prescription*, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See *Vidyavathi Kapoor Trust v. CIT*, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the



respondent from claiming violation of the right of fair representation.”

69. In ***P.S. Gopinathan v. State of Kerala***,⁷ the Hon’ble Court observed that once the appellant has accepted his initial promotion which was termed as temporary, without any objections and was appointed on regular basis from a subsequent date, he was deemed to have acquiesced and is estopped from challenging it at a later stage. The relevant portion of the judgment is reproduced herein:

“....33. The law of equitable estoppel by acquiescence has been clearly stated by Fry. J. in Wilmott v. Barber. It has been said therein that the acquiescence which will deprive a man of his legal rights should amount to fraud. A man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description, are stated thus:

- (i) The plaintiff (i.e., the party pleading acquiescence) must have made a mistake as to his legal rights,*
- (ii) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief;*
- (iii) The defendant, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff, if he does not know of it, he is in the same position, as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights;*
- (iv) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights and*
- (v) The defendant the possessor of the legal right must have encouraged the plaintiff in his expenditure of*

⁷ (2008), 7 SCC 70



money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right, where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but nothing short of this will do.

These principles were followed and applied in many cases in India.

X X X

37. Lord Campbell in Carcross v. Lorimer held that: (All ER p. 176 G-H)

generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesces it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence.

38. The aforesaid facts clearly make out an acquiescence of the appellant in accepting order dated 14-1-1992 being treated as temporary appointment order on the post of District and Sessions judge and he cannot now be permitted to change his position and claim the permanent appointment from 14-1-1992 to claim seniority on the post. Besides this, the High Court has rightly held that in the absence of the challenge to the second appointment.”

70. Upon perusal of the judicial dictum expounded above it can be summarily stated that as per the ‘doctrine of acquiescence’ a man shall not be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to assert those rights.

71. Tersely stated, the doctrine of acquiescence literally means silent assent, tacit consent, concurrence, or acceptance to a particular act which



may be inferred by the conduct of the party thereby, denoting the intention of the party to abandon the rights.

72. Acquiescence to an act can be ascertained either directly when the delinquent had full knowledge and assented expressly, or indirectly wherein the delinquent possesses the right to nullify the act but takes no measures and becomes a bystander to the actions of the other person despite such actions conflicting with his rights, it mirrors passive assent.

73. Therefore, if a party having an interest to prevent an act being done had full notice of it being done, they do not have a right to challenge the act to their prejudice and it is an implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act.

74. Furthermore, since the applicability of the CDA Rules of the PSE to the petitioner CMD is by virtue of the principle of *mutatis mutandis* as expounded under clause 1.15.1 of the terms of appointment. This Court, at this juncture, also deems it imperative to briefly state the settled position of law with regard to the Latin phrase *mutatis mutandis* and the applicability of the same in the present matter.

75. The Hon'ble Supreme Court in ***Prahlad Sharma v. State of U.P.***,⁸ provided for the definition of the phrase *mutatis mutandis*. The relevant paragraphs are reproduced herein below:

“....**10.** *The other decision which has been referred by the learned counsel for the appellant is Maharashtra State Coop. Cotton Growers' Marketing Federation*

⁸ (2004) 4 SCC 113



Ltd. v. Employees' Union [1994 Supp (3) SCC 385 : 1995 SCC (L&S) 36] . In this case, in the appointment letter which was issued to the seasonal employees, it was specified therein that their conditions of service shall be governed by the Model Standing Orders. Some of the provisions of the Model Standing Orders provided for making the services of some categories of employees permanent. The seasonal employees also claimed the same benefit. It has been held that it was incorrect to say that all the Model Standing Orders would be applicable to the seasonal employees. It has been observed that the Model Standing Orders would be applicable to the seasonal employees mutatis mutandis. It is further observed that Model Standing Order 4-B in particular, will be inapplicable to the seasonal employees because of the very nature of their employment and hence it could not be read into service conditions of the seasonal employees even though it was mentioned in their letters of appointment that they shall be governed by the provisions of the Model Standing Orders. It was further held that only such conditions of service would be applicable which could be applied to the seasonal employees and not the other conditions. It has also been observed that the Model Standing Orders would be applicable to the seasonal employees mutatis mutandis.

11. The expression “mutatis mutandis” itself implies applicability of any provision with necessary changes in points of detail. The rules which are adopted, as has been done in the present case, make the principles embodied in the rules applicable and not the details pertaining to particular authority or things of that nature. In the present case, we find that the High Court has found that the U.P. Rules of 1999 have been adopted mutatis mutandis. Therefore, in our view, the revisional power which has been vested in the State Government in respect of the employees of the State may be exercisable by an authority parallel or corresponding thereto in the Corporation in regard to employees of the Corporation.”



76. In *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*,⁹ the Hon'ble Supreme Court again expounded the meaning of *mutatis mutandis*. The relevant paragraphs are reproduced herein below:

“....II. *Mutatis mutandis*—Meaning of

17. In *Ashok Service Centre v. State of Orissa* [(1983) 2 SCC 82 : 1983 SCC (Tax) 90 : AIR 1983 SC 394] this Court held as under : (SCC p. 93, para 17)

“17. ... Earl Jowitt's The Dictionary of English Law (1959) defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn. 1968) defines 'mutatis mutandis' as:

'With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like.'

... Extension of an earlier Act 'mutatis mutandis' to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. ... In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the principal Act wherever the Act has manifested an intention to modify the principal Act.”

⁹ (2013) 5 SCC 470



Similarly, in Prahlad Sharma v. State of U.P. [(2004) 4 SCC 113 : 2004 SCC (L&S) 621] , the phrase “mutatis mutandis” has been explained as under : (SCC p. 120, para 11)

“11. The expression ‘mutatis mutandis’ itself implies applicability of any provision with necessary changes in points of detail.”

(See also Mariyappa v. State of Karnataka [(1998) 3 SCC 276 : AIR 1998 SC 1334] and Janba v. Gopikabai [(2000) 4 SCC 1 : AIR 2000 SC 1771] .)

18. Thus, the phrase “mutatis mutandis” implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail.”

77. Upon perusal of the foregoing principle of law it can be summarily stated that the Latin expression ‘mutatis mutandis’ literally means applicability of the stated provisions with necessary changes in the points of detail. The rules which are ascribed and adopted, their applicability would make the essence of principles embodied in those rules relevant and not the details pertaining to particular authority or things of that nature.

78. In light of the foregoing discussion, the settled position of law and upon perusal of the averments made by the learned counsel for the parties, this Court observed that the relief sought by the petitioner CMD is to quash/set-aside the office Memorandums which provided for the charges levied against him thereby, directing to initiate a departmental inquiry to ascertain the said charges.

79. In this backdrop, this Court keeping in mind the settled position of law i.e., the High Courts must exercise its writ jurisdiction sparingly and must not issue a writ wherein the relief sought by the petitioner pertains



to quashing of a charge memo. This Court is of the considered view that the limited scope of intervention is by virtue of the fact that a charge memo *per se* does not violate the rights of the petitioner and hence, provides no cause of action to avail the recourse by way of preferring the instant petition.

80. A charge memo is nothing but a set of allegations against the delinquent, which may be proved/disproved during the course of the proceedings to prove his innocence.

81. In light of the foregoing discussions, this Court is of the view that the instant petition has been wrongfully preferred by the petitioner CMD as the departmental inquiry initiated against him are at a nascent stage and it is for the petitioner CMD to assert his case on merits during the course of departmental proceedings and not under the instant writ petition.

82. Before concluding, this Court also deems it appropriate to discuss the second limb of the consideration i.e., the issue, whether acceptance of the terms of appointment by an employee at the time of joining the services as CMD would attract the doctrine of acquiescence.

83. As per the same, the terms and conditions as provided in the letter of appointment and accepted by the employee would be deemed final if the same were not challenged at the relevant time. Upon perusal of the material on record, the petitioner has not challenged the letter of appointment and/or the terms provided therein, rather has conveniently chosen to interpret the terms of appointment to support his case.

84. In light of the discussions with regard to the doctrine of acquiescence and the interpretation of the phrase *mutatis mutandis*, this



Court is of the view that the petitioner CMD is estopped from challenging the same as he is deemed to have consented to the abovesaid letter of appointment and the terms prescribed therein. Thus, when acquiescence takes place, it presupposes knowledge against a particular act which flows till the passive acceptance.

85. This Court further deems it imperative to also deal with the present case on merit but only limiting to the point i.e., validity of initiation of the departmental proceedings as the same has been challenged by the petitioner CMD.

86. In the above backdrop, this Court is of the considered view that since the petitioner CMD had accepted the terms of appointment hence, by virtue of para 1.15.1 of the letter of appointment, the CDA Rules of 1975 framed by the PSE *mutatis mutandis* apply to him, therefore, concluding that the departmental proceedings have been rightfully initiated under Rule 26 in contravention of Rule 4 of the CDA Rules.

87. Hence, considering the limited scope of intervention that can be exercised by this Court to quash a charge-memo/show-cause, initiation of disciplinary proceedings in accordance with the procedure in place and acceptance of the terms of appointment and applicability of the doctrine of acquiescence, the petitioner CMD has failed to make out a case in support of the reliefs as prayed.

CONCLUSION

88. In light of the foregoing discussions this Court is of the considered view and has observed the following with regard to the issues framed:

- A writ petition cannot be exercised by a delinquent to seek quashing/setting-aside of the departmental proceedings simply



based on the issuance of a charge-memorandum/show cause with the only exceptions in cases where there is a lack of jurisdiction and/or the charge-memo/show-cause is issued by a person who is not competent as well as the same has been issued without following the relevant statutes/rules. The scope of writ jurisdiction in such regard is very limited and must be exercised sparingly and not when the inquiry is at a nascent stage, as mere issuance of a charge-memo does not *per se* violate upon the rights of the delinquent.

- Acceptance of the terms of appointment by the petitioner CMD at the time of joining would tantamount to consent to the said terms of engagement as the same has not been challenged by him at the time of appointment thus, attracting the doctrine of acquiescence. It is further observed that by virtue of applicability of the doctrine of acquiescence and the provision under para 1.15.1 of the letter of appointment applying *mutatis mutandis* the petitioner CMD is precluded from raising any objections against the initiation of disciplinary proceedings. Therefore, having established the principality on this issue, it is further observed that para 1.15.1 of the letter of appointment stipulates the applicability of the CDA Rules formulated by the PSE to the petitioner CMD hence, including the petitioner CMD within its ambit.

89. This Court is of the view that the petitioner CMD has wrongfully preferred the instant petition for the reasons that the departmental proceedings are still pending and mere issuance of a charge-memo/show-cause does not violate the rights of the petitioner CMD therefore, it is not



2024 : DHC : 2632



a fit case for interference by this Court under its extraordinary writ jurisdiction.

90. Furthermore, the said departmental inquiry has been initiated under Rule 26 for the petitioner CMD acting in contravention of Rule 4 of the CDA Rules which as established above clearly applies to the petitioner CMD hence, on the face of the record, this Court does not find any infirmity in the initiation of the disciplinary proceedings.

91. In light of the foregoing discussions, the impugned Office Memorandums dated 17th June, 2022 and 28th January, 2022 and letter dated 30th June, 2022, are upheld.

92. For all the aforesaid reasons, this Court does not find any merit in the instant petition, and the same stands dismissed.

93. Pending application, if any, stand dismissed.

94. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 3, 2024
rk/da/av