

A STATE OF MADHYA PRADESH & ANR

v.

AKHILESH JHA & ANR

(Civil Appeal No. 5153 of 2021)

B SEPTEMBER 06, 2021

**[DR. DHANANJAYA Y. CHANDRACHUD,
VIKRAM NATH AND HIMA KOHLI, JJ.]**

Service Law – Departmental enquiry – First respondent-

- C *Superintendent of Police allegedly violated administrative orders of the Inspector General of Police for disbanding “Gunda Squad” constituted, operated and supervised by the first respondent, and a person interrogated by the Squad died in custody – Magisterial enquiry was conducted and the report submitted contained observations against the first respondent – Departmental enquiry*
- D *subsequently convened against the first respondent and charge sheet was issued – Tribunal quashed the charge-sheet on grounds that there was a delay of nearly two years in concluding the disciplinary enquiry; and that the charges were ambiguous – Affirmation of the order, by High Court – Held: Not justified –*
- E *Charges against the first respondent were neither vague nor ambiguous – The charge-sheet, together with the statement of imputations, contains detailed elaboration of the allegations against the first respondent – Tribunal quashed the charge-sheet purportedly on the basis that prejudice had been caused to the first respondent by denial of opportunity for deputation or for promotion as a result of the pendency of the proceedings – This line of reasoning which weighed with the Tribunal is plainly erroneous – Every delay in conducting a disciplinary enquiry does not, ipso facto, lead to the enquiry being vitiated – Whether prejudice is caused to the officer who is being enquired into is a*
- F *matter which has to be decided on the basis of the circumstances of each case – Prejudice must be demonstrated to have been caused and cannot be a matter of surmise – Chargesheet was issued to the first respondent while he was in service, and hence the disciplinary enquiry can proceed to its logical conclusion –*
- G *Disciplinary enquiry directed to be concluded expeditiously.*

Allowing the appeal, the Court

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HELD: 1. On the basis of the material placed on the record, it was impossible to come to the conclusion that the charge against the first respondent is vague or ambiguous. The charge-sheet, together with the statement of imputations, contains a detailed elaboration of the allegations against the first respondent and does not leave the recipient in a measure of doubt or ambiguity over the nature of the case he is required to answer in the disciplinary enquiry. The finding that the charge is vague is palpably in error. The Tribunal declined to quash the charge-sheet by its initial order dated 28 July 2016. However, by a subsequent order dated 5 January 2018, it proceeded to do exactly what it had declined to do by its previous order. The Tribunal purportedly did so on the basis that prejudice had been caused to the first respondent by the denial of an opportunity for deputation or for promotion as a result of the pendency of the proceedings. The line of reasoning which weighed with the Tribunal is plainly erroneous. The Tribunal would have been justified in directing the expeditious conclusion of the enquiry, but instead, it proceeded to quash the enquiry in its entirety. This was clearly impermissible. Every delay in conducting a disciplinary enquiry does not, *ipso facto*, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise. Apart from submitting that the first respondent was unable to proceed on deputation or to seek promotion, there is no basis on which it could be concluded that his right to defend himself stands prejudicially affected by a delay of two years in concluding the enquiry. The High Court, therefore, has clearly failed to properly exercise the jurisdiction vested in it by simply affirming the judgment of the Tribunal. The judgment of the Tribunal suffered from basic errors which go to the root of the matter and which have been ignored both by the Tribunal as well as by the High Court. [Para 13][152-C-H; 153-A]

2. The chargesheet was issued to the first respondent while he was in service, and hence the disciplinary enquiry can

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- A **proceed to its logical conclusion. The disciplinary enquiry should be concluded expeditiously, preferably by 31 July 2022. [Para 14][153-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.5153 of 2021.

- B From the Judgment and Order dated 05.09.2019 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in MP NO.3854 of 2018.

Ms. Ankita Chaudhary, AG, Mrinal Elker Mazumdar, Manish Yadav, Advs. for the Appellants.

- C Braj K. Mishra, Joby P. Varghese, Rajneesh Kumar Jha, Nishant Kumar Srivastava, Aby P. Varghese, Donna Xavier, Advs. for the Respondents.

The Judgment of the Court was delivered by

- D **DR. DHANANJAYA Y. CHANDRACHUD, J.**

1. Leave granted.

2. This appeal arises from a judgment of a Division Bench of the High Court of Madhya Pradesh dated 5 September 2019.

- E 3. The first respondent was posted as Superintendent of Police at Alirajpur from June 2012 to June 2015. It has been alleged that in spite of the instructions issued by the Inspector General of Police, Indore Zone to disband the “Gunda squad”, the first respondent constituted, supervised and operated the squad. It has been alleged that on 1 June 2014, individuals belonging to such a squad, acting under the supervision

- F of the first respondent arrested an accused who was taken into custody after being called to the police station by the members of the Gunda Squad. The person, who was under interrogation, died in custody on 3 June 2014. A magisterial enquiry was conducted into the custodial death and a report was submitted on 10 October 2014. The report contained

- G observations against the first respondent on his role in illegally constituting the squad.

H 4. Challenging the observations made by the JMFC Alirajpur, in his report dated 10 October 2014, the first respondent instituted proceedings before the High Court of Madhya Pradesh. By its order dated 2 March 2016, the High Court expunged some of the observations

contained in the magisterial report against the first respondent on the ground that they were in violation of the principles of natural justice. On 21 April 2016, the High Court directed that in case any action is initiated against the first respondent on the basis of the magisterial report, a proper opportunity of being heard in response to the allegations should be granted to him before drawing any adverse conclusion.

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5. On 8 June 2016, a departmental enquiry was convened against the first respondent and a charge-sheet was issued. The allegation in the charge-sheet was that the first respondent had committed acts of indiscipline and insubordination by not following the instructions issued by his superior officers regarding the disbanding of the Gunda Squad. The first respondent submitted his reply to the charge-sheet on 7 July 2016, denying the allegations levelled against him. Soon thereafter, he moved the Central Administrative Tribunal¹ at Jabalpur for challenging the charge-sheet which was served on him on 8 June 2016. The Tribunal, by its order dated 28 July 2016, declined to interfere with the charge-sheet but granted an opportunity to the first respondent to initiate appropriate proceedings, if a decision adverse to him was taken on the basis of the reply to the charge-sheet.

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6. The first respondent once again moved the Tribunal for challenging the charge- sheet dated 8 June 2016 in OA 587 of 2017 on the ground that no decision had been taken following his reply to the charge-sheet and that as a result of the pendency of the disciplinary proceedings, his deputation and promotional avenues had been adversely affected.

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7. The Tribunal, by its order dated 5 January 2018, quashed the charge-sheet issued to the first respondent. The following three grounds weighed with the Tribunal:

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- (i) There was a delay of nearly two years;
- (ii) The charges were ambiguous; and
- (iii) The High Court had expunged the remarks in the magisterial enquiry which was held to enquire into the custodial death.

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The order of the Tribunal was assailed by the appellants before the High Court. By its judgment dated 5 September 2019, the Division Bench dismissed the petition, affirming the findings of the Tribunal.

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¹ “Tribunal”

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- A We have heard Ms Ankita Chaudhary, Deputy Advocate General appearing on behalf of the appellants and Mr Braj K Mishra, Counsel appearing on behalf of the first respondent.
- B 8. Assailing the judgment of the Tribunal which has been confirmed by the High Court, Ms Ankita Chaudhary submitted that *ex facie* the charge-sheet and the imputations would indicate that the finding of vagueness is unsustainable. Counsel submitted that the gravamen of the charge-sheet is that the first respondent, who was posted as the Superintendent of Police, Alirajpur, had violated the administrative orders of the Inspector General of Police for disbanding the Gunda Squads and that a person who had been interrogated by the Squad which was constituted, operated and supervised by the first respondent died in custody. Counsel submitted that first and foremost, the expunging of the remarks in the report of the magisterial enquiry would have no bearing on the entitlement of the State to exercise its disciplinary authority over the first respondent. Secondly, it was urged that the Tribunal had declined to quash the charge-sheet in the first OA which was filed by the first respondent before the Bench at Jabalpur. Having declined to quash the charge-sheet at that stage, it was not open to the Tribunal to quash it on a second OA on the plea that there was a delay in completing the enquiry. Thirdly, Counsel submitted that there was, in fact, no delay and if there was a requirement for the enquiry to be concluded within a time schedule, such a direction could have been issued. However, there was no justification to quash the enquiry and to obstruct the disciplinary proceedings which have been convened by the State in exercise of its authority over the respondent.
- C 9. On the other hand, it has been urged on behalf of the first respondent that the charge-sheet is devoid of material particulars, including the date on which the instructions for disbanding the Gunda Squads were issued by the Inspector General of Police as well as the specific role alleged to have been performed by the first respondent in the circumstances leading to the alleged death of the person who was under interrogation. Moreover, it has been submitted that the delay, as a matter of fact, caused prejudice to the first respondent since he was deprived of his opportunities of deputation and promotion at par with his other batch mates. Hence, it has been urged that the delay in conducting the disciplinary proceeding has caused serious prejudice to the first respondent.

10. The charge-sheet was issued to the first respondent in exercise of powers conferred by Rule 10 of the All India Services (Discipline and Appeal) Rules 1969 on 8 June 2016. The charge-sheet which is annexed to the communication issued by the Home Department of the State of Madhya Pradesh contains the following charge:

“You have violated the Rule 03 of All India Services (Conduct) Rules, 1968 by operating Gunda Squad illegally in the District Alirajpur and by committing indiscipline and violation of directions of the Senior Officers. The aforesaid act of yours is against the provisions of Rule 3 of All India Services (Conduct) Rules, 1968 and the same is punishable under All India Services (Discipline and Appeal) Rules, 1969. The detailed particulars of the aforesaid charges are attached.”

11. The statement of charges has been appended to the charge-sheet. The statement of charges indicates that the gravamen of the allegation against the first respondent is that the Inspector General of Police, Indore Zone had issued instructions to all Superintendents of Police that no officer working in the District shall constitute a Gunda Squad and if such a Squad is working, then it must be dissolved immediately. The incident leading to custodial death took place while the individual was in the custody of Police Station Sorwa of District Alirajpur on 3 June 2014. The statement of imputations states, thus:

“The incident of the death in the police custody happened in PS Sorwa of the District Alirajpur on 03.06.2014. The Superintendent of Police, District Alirajpur had sent Subedar K.P. Singh Tomar working as the Squad In charge to interrogate the suspect deceased Jhingla in Crime No.39/14 Section 307 IPC of the police Station Sorwa. Subedar Tomar inflicted injuries to the deceased Jhingla by assaulting him during interrogation, which led the suspect Jhingla to death. When the aforesaid incident took place, the squad in charge Subedar Tomar and other 05 policemen were suspended on 03.06.2014.

In the aforesaid incident, Subedar K.P. Singh Tomar and his all subordinate employees were appointed as the reserve force in the police control room but Shri Akhilesh Jha, the then Superintendent of Police, District Alirajpur had been using all these employees regularly as the Gunda Squad, while Shri Akhilesh Jha

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- A the then Superintendent of Police Alirajpur refused “To have constituted Gunda Squad” in Letter No. SP/Ali/Steno/736/14 dated 15.07.2014. In this regard, the clarification was sought from the then Superintendent of Police, Shri Akhilesh Jha vide letter no. IGP/E/Ka.F-29/47-45-3-A/14 dated 28.09.2014 of the office.”
- B 12. The statement of imputations contains a reference to the Duty Register as well as the General Diary at the material time. The list of documents annexed to the charge-sheet refers to 21 documents on the basis of which the charges were intended to be proved.
- C 13. On the basis of the above material which has been placed on the record, it was impossible to come to the conclusion that the charge against the first respondent is vague or ambiguous. The charge-sheet, together with the statement of imputations, contains a detailed elaboration of the allegations against the first respondent and does not leave the recipient in a measure of doubt or ambiguity over the nature of the case he is required to answer in the disciplinary enquiry. The finding that the charge is vague is palpably in error. The Tribunal declined to quash the charge-sheet by its initial order dated 28 July 2016. However, by a subsequent order dated 5 January 2018, it proceeded to do exactly what it had declined to do by its previous order. The Tribunal purportedly did so on the basis that prejudice had been caused to the first respondent by the denial of an opportunity for deputation or for promotion as a result of the pendency of the proceedings. The line of reasoning which weighed with the Tribunal is plainly erroneous. The Tribunal would have been justified in directing the expeditious conclusion of the enquiry, but instead, it proceeded to quash the enquiry in its entirety. This, in our view, was clearly impermissible. Every delay in conducting a disciplinary enquiry does not, *ipso facto*, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise. Apart from submitting that the first respondent was unable to proceed on deputation or to seek promotion, there is no basis on which it could be concluded that his right to defend himself stands prejudicially affected by a delay of two years in concluding the enquiry. The High Court, therefore, in our view, has clearly failed to properly exercise the jurisdiction vested in it by simply affirming the judgment of the Tribunal. The judgment of the
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Tribunal suffered from basic errors which go to the root of the matter and which have been ignored both by the Tribunal as well as by the High Court.

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14. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 5 September 2019. The charge- sheet was issued to the first respondent while he was in service, and hence the disciplinary enquiry can proceed to its logical conclusion. The disciplinary enquiry should be concluded expeditiously, preferably by 31 July 2022. In the event that the first respondent is entitled to the release of any part of his retiral dues, including gratuity, in consonance with law, necessary steps for that purpose shall be taken within a period of two months from the date of this order.

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15. Pending application, if any, stands disposed of.

Bibhuti Bhushan Bose

Appeal allowed.