The Secretary, Min.Of Defence & Ors vs Prabhash Chandra Mirdha on 30 April, 2007

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2333 OF 2007

The Secretary, Min.of Defence & Ors. …Appellants

VERSUS

Prabhash Chandra Mirdha
…Respondent

O R D E R

1. This appeal has been preferred against the impugned judgment and orders dated 26.2.2004 and 13.8.2004 passed by the High Court of Judicature at Hyderabad in Writ Petition No. 14674 of 1997, and in Review W.P.M.P. No. 18654 of 2004. The issue involved in this case is as to whether the authority, lower or higher than of the appointing authority, can initiate the proceedings against the delinquent on grounds of alleged misconduct.

2. Facts and circumstances giving rise to this appeal are that:

A. Respondent had been working as an Assistant Foreman in the Ordnance Factory, Yeddumailaram, when charge memo dated 8.1.1992 was issued to him on the alleged demand of bribe of Rs.37,000/- and acceptance of Rs.4,150/- on 3.8.1991 in cash from the representative of firm M/s Teela International Limited, Hosur, Bangalore. B. Aggrieved by the said charge memo, respondent preferred O.A. No. 1641 of 1995 before the Central Administrative Tribunal, Hyderabad (hereinafter called as `Tribunal') on 23.12.1995 on the ground that the charge memo had been issued to the respondent by the authority not competent to do so, being subordinate to his appointing authority. C. The said application was allowed vide judgment and order dated 4.1.1996 only on the ground that the officer who had issued the charge memo

> was subordinate to the appointing authority of the delinquent and thus, had no competence to initiate the disciplinary proceedings.

D. Aggrieved by the said order, a Review Application was filed by the appellants which was dismissed vide order dated 20.3.1997. E. Aggrieved, the appellants filed the Writ Petition No. 14674 of 1997 before the High Court which has been dismissed vide impugned judgment and order dated 30.6.2004. Review Application filed by the appellants also stood dismissed vide order dated 13.8.2004.

Hence, this appeal.

3. This Court entertained the appeal vide order dated 30.4.2007 but did not grant any interim relief and in spite of notice to the respondent, he did not enter appearance.

4. The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India, 1950 that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.

5. It is permissible for an authority, higher than appointing authority to initiate the proceedings and impose punishment, in case he is not the appellate authority so that the delinquent may not loose the right of appeal. In other case, delinquent has to prove as what prejudice has been caused to him. (Vide: Sampuran Singh v. State of Punjab, AIR 1982 SC 1407; Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank & Ors., AIR 1995 SC 1053; Balbir Chand v. FCI Ltd. & Ors., AIR 1997 SC 2229; and A. Sudhakar v. Postmaster- General Hyderabad & Anr., (2006) 4 SCC 348).

6. In Inspector General of Police & Anr. v. Thavasiappan, AIR 1996 SC 1318, this Court reconsidered its earlier judgments on the issue and came to the conclusion that there is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority.

7. In Steel Authority of India & Anr. v. Dr. R.K. Diwakar & Ors., AIR 1998 SC 2210; and State of U.P. & Anr. v. Chandrapal Singh & Anr., AIR 2003 SC 4119, a similar view has been reiterated.

8. In Transport Commissioner, Madras – 5 v. A. Radha Krishna Moorthy, (1995) 1 SCC 332, this Court held:

> "Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held

that this was not a permissible ground for quashing the charges by the Tribunal." (See also: Director General, ESI & Anr. v. T. Abdul Razak etc., AIR 1996 SC 2292; and Chairman-cum-Managing Director, Coal India Limited & Ors. v. Ananta Saha & Ors., (2011) 5 SCC 142).

9. Law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the chargesheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the chargesheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the chargesheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide: The State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; Deputy Registrar, Cooperative Societies, Faizabad v. Sachindra Nath Pandey & Ors., (1995) 3 SCC 134; Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; Food Corporation of India & Anr. v. V.P. Bhatia, (1998) 9 SCC 131; Additional Supdt. of Police v. T. Natarajan, 1999 SCC (L&S) 646; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; P.D. Agrawal v. State Bank of India & Ors., AIR 2006 SC 2064; and Government of A.P. & Ors. v. V. Appala Swamy, (2007) 14 SCC 49).

10. In Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury, (2009) 7 SCC 305, this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not be permitted to continue.

11. Ordinarily a writ application does not lie against a chargesheet 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, chargesheet 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 chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

12. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that

the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

(See also: Union of India & Ors. v. Upendra Singh, (1994) 3 SCC 357).

13. Thus, the law on the issue can be summarised to the effect that chargesheet 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 chargesheet 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.

14. The instant case requires to be examined in the light of the aforesaid settled legal propositions. The respondent delinquent challenged the chargesheet on the ground that it had been issued by the authority not competent to do so. The Tribunal vide impugned order dated 4.1.1996 quashed the same only on the ground that the Deputy Director General of Ordnance Factory was the appointing authority of the delinquent employee and competent to impose the penalty referred to under the statutory rules. The chargesheet had been issued by the authority subordinate to him. Thus, the same was not issued by the competent authority.

15. The said judgment and order of the Tribunal shows that the present appellants were not represented nor any argument had been advanced on their behalf as neither name of the counsel for the appellants has been mentioned rather the space is left blank, nor any reference to his argument had been made. The appellants filed a review petition according to which the order had been passed by the Tribunal without giving an opportunity to the appellants to file a detailed counter affidavit and a plea had been taken that the authority which issued the chargesheet had been authorised by the disciplinary authority to serve the charge memo and conduct/conclude the enquiry in the name and under the order of the competent authority. However, the said authority was authorised to impose the punishment.

The review has been rejected by a cryptic order. The High Court concurred with the findings recorded by the Tribunal.

16. Even before us, no order of authorisation in general or any rule permitting the competent authority to delegate its power for conducting the enquiry has been produced. Thus, in such a fact-situation, it is neither desirable nor possible to deal with the issue, rather it is desirable that the issue be left open.

Be that as it may, in case the Tribunal as well as the High Court has permitted the appellants to proceed de novo, we fail to understand why such a course was not adopted though the appellants wasted 20 years in litigation without any purpose.

17. However, in the instant case, the Tribunal has quashed the chargesheet vide order dated 20th March, 1997 in respect of misconduct alleged to have taken place on 31.8.1991. Though the allegations against the delinquent had been very serious i.e. demand and acceptance of bribe, a period of two decades has passed since the alleged incident. Disciplinary proceedings could not be proceeded further as the chargesheet itself had been quashed. There is nothing on record to show that the respondent delinquent is still in service and that even if the appellants are permitted to proceed with the inquiry, the evidence which was available 21 years ago would be available today.

18. ?In view of the above, while leaving the question of law open, we do not want to proceed with the appeal further on merit.

The appeal is accordingly disposed of. No order as to costs.

.....J. (DR. B.S. CHAUHAN) .....J. (DIPAK MISRA) NEW DELHI;

MAY 29, 2012