

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO.07/DB/2020 .

Dinesh Singh Negi, s/o Late Shri Soban Singh Negi, aged about 43 years, r/o
Race Course, Police Line, Dehradun and two others

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, (Home), Civil Secretariat, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Presiding Officer/ Superintendent of Police (Rural), Dehradun.
4. Senior Superintendent of Police, Dehradun.
5. Inspector General, Garhwal Region, Uttarakhand.

....Respondents

Present: Sri Shashank Pandey & Sri Anurag Nautiyal, Advocates,
for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

ORDER

DATED: JANUARY 10, 2020

Justice U.C.Dhyani(Oral)

Petitioners have filed present claim petition for quashing the charge sheets, which have been served upon them and their suspension orders.

2. Ld. A.P.O. objected to the maintainability of the claim petition. The petitioner have, in turn, given reply to such objections, that the claim petition is maintainable.

3. The sole question, at present is, whether to admit the claim petition or not?

4. It is the submission of Ld. A.P.O. that the claim petition is premature. According to him, the delinquent petitioners should have gone to the inquiry officer to participate in the departmental proceedings, and air their views for redressal of their grievances.

5. Ld. A.P.O. has heavily relied upon a decision dated 29.05.2012 of Hon'ble Apex Court rendered in Civil Appeal No. 2333/2007, The Secretary Ministry of Defence and others vs. Prabhash Chandra Mirdha, 2012 (11)SCC 565.

6. It will be apposite to quote the following observations of Hon'ble Apex Court in the said decision:

“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..

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..

13. Thus, the law on the issue can be summarized 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.”

7. Civil Appeal, before the Hon'ble Apex Court, originated from quashing of the charge sheet in respect of misconduct allegedly committed by the party respondents [para 17], which means that the claim petition was

admitted by the Tribunal and then only the charge sheet was quashed in final hearing. Legal proposition, basically, in *Prabhash Chandra Mirdha's* decision (*supra*) is that the removal and dismissal of a delinquent, on misconduct, must be by the authority not below the appointing authority.

8. Hon'ble Apex Court has observed, very clearly, that the charge sheet does not infringe the right of a party. It is only when a final order imposing a punishment adversely affecting the party is passed, it may have a grievance and cause of action. Hon'ble Apex Court also went on to say that a charge sheet or a show cause notice in disciplinary proceedings, should not ordinarily be quashed by the Court.

9. As we have said above, we are only on admission of the claim petition, at this stage and not in final hearing.

10. Ld. A.P.O., drawing strength from Section 4 of the UP Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand), submitted that the claim petition, before this Tribunal is not maintainable.

11. Sub-section (1) of Section 4 of the aforesaid Act reads as below:

“Reference to claim to Tribunal can (1) subject to other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.”

12. Petitioner is admittedly a public servant. It is admittedly a service matter within the jurisdiction of this Tribunal. The question is, whether the word ‘order’ would include submission of charge sheet against the petitioner or not?

‘Explanation’ appended to Section 4 of the Act provides the answer as below:

“For the purpose of this sub-section ‘order’ means an order or omission or in-action of the State Government.....”.

13. We are, therefore, of the view that submission of charge sheet against the public servant and suspension order will be covered by the word ‘order’, occurring in Section 4 of the Act. A reference of claim petition against an order of suspension has specifically been mentioned in the Schedule to the Act.

14. Otherwise also, even if it has been pronounced by the Hon'ble Supreme Court that ordinarily a writ petition does not lie against a charge sheet or a show cause notice, that does not mean that all the claim petitions should be scuttled at the admission stage, for how the Tribunal will come to know as to what is the material for or against the delinquent petitioner, unless an effective hearing is given to both the sides, that too on the basis of documents (to be) filed by them.

15. A judgment dated 15.07.2010 rendered by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench in Dharendra Kumar Rai vs. State of U.P. through Principal Secretary (Home) and a judgment of Central Administrative Tribunal, Lucknow rendered in Bhawani Pher Pandey vs. Union of India & others decided on 18.05.1999, have been placed before us by Ld. Counsel for the petitioner in support of his contention. We need not go into the details of such decisions, for the ultimate law has already been pronounced by Hon'ble Apex Court in *Prabhash Chandra Mirdha's* case and lots of other decisions including the one in *Union of India vs. Upendra Singh*, 1994 (3) SCC, 357, Para No. 6 and 7 of which are relevant in the context of present claim petition and are reproduced herein below for convenience:

“In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons*⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para

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

correctness of the decision making process but also on the correctness of the decision itself."

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but 5 1992 Supp (2) SCC 312 mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

16. We think that the claim petition should be admitted, which does not amount to interference in the departmental proceedings.

17. Admit.

18. Ld. A.P.O. accepts notice on behalf of Respondent No.1. He seeks and is granted 4 weeks' time to file C.A./W.S.

19. In addition, issue notices to Respondents No. 2 to 5, returnable on or before 10.02.2020. Steps may be taken within three days.

20. List on 10.02.2020

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 10, 2020
DEHRADUN

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