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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE MANINDER S. BHATTI
ON THE 17th OF AUGUST, 2023
WRIT PETITION No. 8994 of 2017**

BETWEEN:-

.....PETITIONER

(BY SHRI AMITABH GUPTA-ADVOCATE)

AND

1. UNION OF INDIA THROUGH SECRETARY MINISTRY OF HUMAN RESOURCE AND DEVELOPMENT DEPARTMENT OF SCHOOL EDUCATION AND LITERACY SHASTRI BHAWAN, NEW DELHI (DELHI)
2. DIRECTOR AUROBINDO NATIONAL COUNCIL OF EDUCATION RESEARCH AND TRAINING NCERT MARG NEW DELHI (DELHI)
3. DIRECTOR NATIONAL INSTITUTE OF TECHNICAL TEACHER TRAINING AND RESEARCH NITTTR SHYAMALA HILLS (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SURYA PRATAP SINGH RAI-ADVOCATE FOR RESPONDENT NOS.1 & 2 AND SHRI SWAPNIL GANGULY-ADVOCATE FOR RESPONDENT NO.3)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

The petitioner has filed this petition while praying for the following reliefs.

- "1. Certiorari quashing the impugned memorandum of charge

sheet dated 23/05/2017, Annexure P/6 and every proceeding based on the same.

2. Any relief which the Hon'ble Court deem fit in the facts and circumstances of the present case."

2. The memorandum of petition reflects that the petitioner herein was appointed as Assistant Professor with National Institute of Technical Teachers' Training and Research, Bhopal (hereinafter referred to as NITTTR for the sake of brevity) vide order dated 03/09/1986 and was promoted as Professor vide order dated 24/06/1996. The petitioner was then was sent on deputation to Pandit Sundar Lal Sharma Central Institute of Vocational Education (hereinafter referred to as PSSCIVE for the sake of brevity). The petitioner in terms of said order joined in the borrowing institution on 23/03/2006. On 13/02/2008 an order of repatriation of the services of the petitioner was passed. The order of repatriation was initially assailed by the petitioner before the Central Administrative Tribunal (CAT). The CAT quashed the order of repatriation dated 05/12/2008. Then the petitioner made an effort to join at PSSCIVE after the order of the Tribunal but he was not allowed to join, therefore, the petitioner continued with NITTTR. The order passed by the CAT was challenged by respondent No.2 by filing a petition before this Court vide WP No.2363/2009. This Court vide order dated 16/07/2010 set aside the order passed by the CAT. Just two days prior to the order of repatriation, a letter dated 11/02/2008 was issued by which preliminary inquiry was ordered against the petitioner by appointing one Smt. Anita Bhatnagar Jain as Inquiry Officer and the Inquiry Officer after conducting a preliminary inquiry, submitted a report dated 31/10/2008 holding the petitioner guilty and suggesting punishment. The said report remained kept in abeyance and no regular departmental inquiry was

conducted against the petitioner. After lapse of about 9 years, the petitioner was served with the memorandum of charge-sheet vide order dated 23/05/2017 and the said charge-sheet contained the allegations which were made basis to conduct the preliminary inquiry by PSSCIVE i.e the borrowing institution. The charge-sheet has been challenged in the present petition by the petitioner on the ground that the same has been issued by an incompetent Authority.

3. Learned counsel for the petitioner contends that the charge-sheet has been issued by an authority not competent to issue the same. It is contended by the counsel that the preliminary inquiry was conducted when the petitioner was serving with the borrowing institution i.e PSSCIVE and the said inquiry cannot be made basis by the parent institution to take disciplinary action against the present petitioner. It is contended by the counsel that only borrowing institution i.e PSSCIVE could have proceeded against the petitioner by way of a regular departmental inquiry but no regular departmental inquiry can be conducted by the parent department of the petitioner and accordingly, learned counsel submits that issuance of charge-sheet goes contrary to the provisions of Rule 20 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and it is further contended by the counsel that the Staff Services Rules which were prevalent in the establishment of the NITTTR also contain the identical provisions in Rule 34.9 of the Staff Services Rules.

4. It is further contended by the counsel that the charge-sheet has been issued in a purely mechanical manner on the strength of a communication dated 28/03/2017 issued by Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India which has been brought on record by the respondent No.1 along with its reply by which NITTTR was informed that during the term of the petitioner with the borrowing

department, commencing from 23/03/2006 to 14/02/2008, various complaints were received against the petitioner and a fact finding inquiry was conducted and the Inquiry Officer found 8 charges to be proved against the petitioner. Accordingly, the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India directed the respondents to consider institution of disciplinary proceedings against the present petitioner. It is contended by the counsel that the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India has no right or authority to issue such a direction inasmuch as the petitioner's parent department is NITTTR and the borrowing institution was PSSCIVE. It is contended by the counsel that NITTTR is a society registered under the provisions of Madhya Pradesh Societies Act, 1973.

5. It is further contended by the counsel that NITTTR has its own memorandum of association and the memorandum of association contains provisions pertaining to the Classification, Method of Appointment and Determination of the terms and conditions of the service of teacher and other staff of the Institution. As per Clause 21 of the memorandum of association, the NITTTR can frame rules and make provisions for the matter pertaining to the service conditions of the employees and staff of the Institution. It is therefore, contended by the counsel that the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India has no right to interfere with the service conditions of an employee. The NITTTR is an Institution having its own memorandum of association and the NITTTR has framed Staff Service Rules as well. The said Staff Service Rules though vide notification dated 23/10/2009 have been replaced with the Central

Civil Services Rules for all purposes but on the date of alleged preliminary inquiry by the borrowing department, the said Staff Service Rules were in force and therefore, learned counsel submits that the issuance of the charge-sheet to the petitioner in exercise of Rule 14 of the Rules of Central Civil Services (Classification Control and Appeal) Rules 1965 is an exercise in futility. It is contended by the counsel that as the allegation pertains to a period prior to October, 2009 when the Rules of 1965 were adopted by the NITTTR, therefore, any disciplinary action was only permissible in the light of Staff Service Rules which have been brought on record as Annexure P/3. The charge-sheet having been after 9 years of alleged misconduct deserves to be quashed on the ground of delay & laches. Thus submits that in the present case, the charge-sheet has been issued by incompetent authority and is also in conflict with the provisions of Rules 20 of 1965. Therefore, the charge-sheet deserves quashment being nullity.

6. Per contra, learned counsel for the respondent No.1 & 2 submits that the present petition filed by the petitioner is misconceived and deserves to be dismissed. It is contended by the counsel that against the petitioner a preliminary inquiry was conducted when the petitioner was working with the borrowing institution. In the said preliminary inquiry, 8 charges against the petitioner were found to be proved. Later on, upon repatriation of the services of the petitioner to the lending Institute, the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India vide communication dated 28/03/2017 directed the NITTTR to institute disciplinary proceedings against the petitioner and accordingly on the strength of the communication dated 28/03/2017, the charge-sheet has been issued to the petitioner. It is contended by the counsel that the petitioner has approached at a

premature stage and the veracity of allegations cannot be gone into at this stage, therefore this petition deserves dismissal on the very threshold.

7. Learned counsel for respondent No.3 & 4 while adopting the argument advanced by respondent No.1 & 2, additionally submits that the NITTTR and PSSCIVE both fall within the domain of the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India. It is contended by the counsel that the the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India accordingly taking note of the fact that the a preliminary inquiry was conducted against the petitioner in which the charges against him were found to be proved, rightly issued a direction to initiate departmental inquiry against the petitioner vide communication dated 28/03/2017. It is contended by the counsel that the ground so taken recourse to by the petitioner as regards the competency of the Authority is of no consequence inasmuch as both the institutes NITTTR and PSSCIVE function under the overall control of the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India. It is further contended by the counsel that the memorandum of association also reflects that the Central Government approval is required at various stages of the functioning of NITTTE. It is therefore contended by the counsel that the present case filed by the petitioner deserves to be dismissed. Learned counsel placed reliance on the decision of Division Bench of this Court in the case of **Jagdish Baheti Vs. State of Madhya Pradesh** reported in **(2015) 3 MPLJ 172** wherein the Division Bench held that mere issuance of charge-sheet does not give rise to any cause of action. Reliance is also placed in

the case of **Secretary, Ministry of Defense and Ors. Vs. Prabhsh Chandra Mirdha** reported in **2012 (11) SCC 565, State of Orissa and Anr. Vs. Sangram Keshri Misra and Anr.** reported in **2010 (13) SCC 311**. Learned counsel also placed reliance in the decision of Apex Court in **Civil Appeal No.5153/2021 (State of M.P. Vs. Akhilesh Jha)** and contended that every delay in conducting departmental inquiry does not *ipso facto* lead to the inquiry being vitiated. It is contended by the counsel that on the ground of delay only, the charge-sheet cannot be set aside, thus, submits that the present petition deserves to be dismissed.

8. Parties have not argued or pressed any other point.

9. Heard rival submissions of the parties and perused the record.

10. A perusal of the record reflects that the petitioner herein was appointed by NITTTR as Assistant Professor on 03/09/1986. The petitioner was eventually promoted as Professor on 24/06/1996. The petitioner was then appointed on deputation with PSSCIVE vide order dated 23/03/2006. The appointment of the petitioner was to remain in force for a period of 5 years or till the age of 62 years or until further order. Thereafter, vide order dated 13/02/2008 the services of the petitioner were repatriated to his parent Institution i.e NITTTR. The issue in the present case pertains to the alleged misconduct on the part of the petitioner for a period commencing from 23/03/2006 to 14/02/2008. The petitioner was subjected to a preliminary inquiry and the said preliminary inquiry report has been brought on record as Annexure P/5. The report reflects that there were certain complaints against the petitioner and accordingly the Inquiry Officer considered the allegation that the present petitioner made attempt to delink PSSCIVE from NCERT to form a separate organization so as to secure his vested interest. The petitioner also made effort

to shift PSSCIVE and created various administrative problems. The petitioner also mentally tortured the employees thereby causing adverse effect to academic environment of PSSCIVE. The petitioner also ignored the advise of the members of Institute Advisory Board of PSSCIVE. The further allegations were to the effect that the petitioner was on frequent tours without approval of the NCERT headquarter and while on tours, he used to assign his charge to his relatively junior faculty. The preliminary inquiry further reflects that the allegations of irregular appointment by the petitioner of the couple of employee. The said inquiry was undisputedly conducted by the borrowing institute of the petitioner i.e. PSSCIVE. The inquiry report which has been brought on record as Annexure P/5 is dated 31/10/2008. On the basis of the said inquiry, the charge-sheet of the petitioner has been issued on 23/03/2017. There is a delay of 9 years in issuing the charge-sheet. The stand of the respondents is that upon receipt of the letter dated 28/03/2017 of the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India, the charge-sheet has been issued to the present petitioner. In the present case, the interference with the charge-sheet is being sought on the various grounds including the ground of delay. Interference with the charge-sheet on the ground of delay is only permissible when it is established that the same is going to cause prejudice to the employee concerned and there is failure on the part of employer to explain the delay which occasioned in initiation of inquiry after the inordinate delay.

11. The Apex Court in the case of State of **AP Vs. N. Radhakishan** reported in **1998 (4) SCC 154** while dealing with an issue pertaining to initiate the disciplinary proceedings after inordinate delay held in paragraph 19 as

under:

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

12. The aforesaid decision of the Apex Court was again taken note of by the Apex Court in the case of State of M.P. Vs. Bani Singh reported in 1999

Suppl SCC 738 and also in the case of **P.V. Mahadevan Vs. MD, T.N. Housing Board** reported in **(2005) 6 SCC 636**. Hence, in view of the aforesaid enunciation by the Apex Court, it is first important to take note of the pleadings as incorporated in the petition. A perusal of the petition reflects that the petitioner in none of the paragraphs has mentioned that as to what prejudice has been caused to the petitioner on account of issuance of the charge-sheet after a lapse of 9 years. The other ground on which a delayed charge-sheet can be interfered with, is absence of explanation regarding delay by the department/employer. The charge-sheet which has been brought on record as Annexure P/6, nowhere reflects the reasons so as to justify the delay. On the contrary, the stand of the respondent No.3 in return, makes it abundantly clear that the inquiry was initiated on the directives of the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India dated 28/03/2017. Therefore, prior to the communication dated 28/03/2017, there was no effort by the NITTTR to initiate departmental inquiry against the petitioner. The NITTTR vide communication dated 28/03/2017 was informed about the preliminary inquiry by the borrowing institute and accordingly, the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India vide communication dated 28/03/2017, left the discretion to be exercised by the NITTTR to institute the disciplinary proceedings.

13. A perusal of paragraph 2 of the letter dated 28/03/2017 reveal that there was no binding directions to the NITTTR to initiate the inquiry but NITTTR was extended liberty to consider the institution of disciplinary proceedings. A perusal of the return of respondents as well as opening paragraph of the memorandum of charge-sheet dated 23/05/2017, reveal that the

charge-sheet has been issued in compliance of the letter dated 28/03/2017. Therefore, it is unequivocally clear that there was no application of mind by the NITTTR before issuance of charge-sheet to the petitioner on 28/05/2017 nor there was any attempt to explain the delay. As, undisputedly, there is no explanation by the NITTTR as regards the delay which has occasioned in issuing of charge-sheet pertaining to the allegations for the period commencing from 23/03/2006 to 14/02/2008, therefore, on the ground of unexplained delay as well, the charge-sheet is unsustainable.

14. So far as competency of authority to issue charge-sheet in terms of Rule 20 of the 1965 is concerned, it is first germane to deal with the provisions of Rule 20 of the 1965 which are reproduced as under:

"20. Provisions regarding officers lent to State Governments, etc.

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant-

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it

deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such order thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of rule 15.

EXPLANATION - The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with rule 14."

15. Rule 20 of 1965 deals with the provisions of disciplinary action regarding the employees who are sent on deputation and with the authority of the borrowing department to initiate the disciplinary proceedings. A perusal of the rule makes it abundantly clear that a borrowing authority can initiate the disciplinary proceedings and also can exercise the powers regarding the imposition of penalty mentioned in Rule 11(i) to 11(iv) and if there is a difference of opinion between the borrowing and the lending authority, the matter has to be decided by the lending authority. The Rule further provides that if the borrowing authority is of the opinion that any other penalty is to be imposed which are provided in Rule 11(v) to 11(ix) to be inflicted, the borrowing authority shall place services of the concerned employee at the disposal of lending authority and transmit the proceedings of inquiry to the

lending authority and the lending authority then shall pass an order thereon which it may deem necessary.

16. Thus, provisions of Rule 20 of the 1965 leave no *iota* of confusion or doubt that pertaining to the charges when an employee is on deputation, the right to initiate disciplinary action is with the borrowing authority. In the present case, the borrowing authority though conducted a preliminary inquiry did not issue any charge-sheet to the petitioner nor made any effort to conduct a regular inquiry. The regular inquiry is being sought to be conducted by the parent institute i.e NITTTR that too after receiving the instructions from the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India vide letter dated 28/03/2017. The opening paragraph of the preliminary inquiry also contains the eventualities of sending on deputation to the petitioner to PSSCIVE and its repatriation to NITTTR . Therefore, the PSSCIVE was the borrowing institute of the petitioner and the NITTTR is the lending institute of the petitioner, thus, the adherence to Rule 20 of 1965 was imperative. The NITTTR being lending institute had no power to issue the charge-sheet to the petitioner in view of the provisions of Rule 20 of Rules of 1965 as undisputedly, the allegation pertains to the period when the petitioner was on deputation with the PSSCIVE. The order of deputation of the petitioner which has been brought on record reflects that the petitioner was sent on deputation for a fixed period and ultimately the petitioner was to be repatriated back to NITTTR and accordingly he was repatriated back vide an order dated 13/02/2008. If according to the respondents both the institutes are integral part of the Ministry of Human Resources and Development, Department of School Education & Literacy, Government of India, then there was no occasion to send the petitioner on deputation nor to repatriate him back to

NITTTR. The deputation of the petitioner to PSSCIVE and repatriation back to NITTTR makes it abundantly clear that they are two different departments/institutions. The respondents through out have supported the order of repatriation dated 13/02/2008 and even challenged the order of the Central Administrative Tribunal by which the order of repatriation was quashed by the CAT by filing a petition before this Court vide WP No.2363/2009 and this Court set aside the order passed by the CAT and accordingly, affirmed the order of repatriation of the petitioner dated 13/02/2008. Therefore, in the aforesaid factual background, in the case in hand, the provisions of Rule 20 of Rules of 1965, squarely apply and accordingly, the charge-sheet by the lending institution to the petitioner, could not have been issued. Moreover, the NITTTR in the present case has issued the charge-sheet in a purely mechanical manner. There is no application of mind by the NITTTR nor the NITTTR has exercised the discretion. Thus, issuance of the charge-sheet inherently lacks the competence and accordingly the same deserves quashment.

17. Accordingly, impugned charge-sheet dated 23/05/2017 (Annexure P/6) and ensued proceedings stand quashed and the petition stands allowed.

(MANINDER S. BHATTI)
JUDGE

Astha