

(2010) 10 DEL CK 0045

In the Delhi High Court

Case No : Writ Petition (C) No. 13733 of 2009

Dr. N. Balakrishnan

APPELLANT

Vs

Nehru Memorial Museum and Library Society and Others

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 10, 3(1)
Constitution of India, 1950 — Article 14, 226, 227, 4

Citation : (2010) 120 DRJ 141 : (2011) 161 PLR 21

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Nitya Ramakrishnan and Piya Singh, for the Appellant; Parag P. Tripathi, ASG, Kunal Bahri, Jayant K. Mehta and S.C. Dhanda for R-1 and 2 and Sudhindra Tripathi, proxy counsel for Peeyoosh Kalra, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The present writ petition under Article 226 of Indian constitution challenges the interim suspension order passed against the petitioner dated 30th April 2009 whereby the petitioner has been suspended from his post pending the disciplinary enquiry and consequently the charge sheet was also issued on 22.6.2009 which has also been made a subject of challenge in the writ petition. The brief facts of the case can be enunciated as under:

a) The petitioner is stated to be the responsible employee of the respondent society namely "The Nehru Memorial Museum and Library Society" (herein after referred as NMML or respondent society). The said society operated under the ministry of culture which has been arrayed through union of India as respondent No. 3. The respondent No. 2 is the chairman of executive counsel of respondent No. 1 society.

b) The petitioner claims to be currently holding the post of the deputy director of the respondent society. The petitioner is said to be working with that of the respondent No. 1 for the last more than 23 years. The petitioner has averred in

the petition to have joined the respondent in 1986 and since then the he has been working with the respondent.

c) The grievance of the petitioner emanates from the petitioner's unhealthy relations with that of the respondent's society which started in the in year 2008 which ultimately has culminated into the interim suspension which is baseless and is backed by malice according to petitioner. The petitioner has stated in the petition as a background of the dispute as to how according to the petitioner, he is not treated properly in the institution. The petitioner has given several instances which happened in the year 2008 and prior to the same including the director's decision to delegate the powers of the deputy director. The said decision according to the petitioner is not proper which was also raised before the chairman who is respondent No. 2. Likewise other instances including the petitioner's elevation as deputy director is also stated to be not free from controversy.

d) In this backdrop, the petitioner submitted that due to the unhealthy relationship between the petitioner and the director of the respondent, the respondent was searching for one reason or the other which ultimately lead to starting of the false and malafide disciplinary enquiry and also paved the way for the interim suspension which ought to be quashed by this Court.

e) The petitioner then explained his case which is a subject matter of the disciplinary enquiry. The petitioner firstly explained that in year 2000, a committee report under Mr. A.K. Damodaran, who was the member of the NMML Executive council was asked to suggest amendments to the Recruitment rules. Pursuant to suggestions of Damodaran committee, there was discussion between the ministry of culture and executive council and they have thought it fit to amend the rules which in such a manner that the post of the deputy director was to be filled by departmental promotion. The petitioner explained that this has become one of the accusation in the charge sheet whereby the petitioner is alleged to have influence this process of amendment of the rules so as to become deputy director. It has been explained by the petitioner the said decision was taken at very high level after much discussion spanning over 5 years. The charge sheet however provides that the petitioner issued an explanatory note to the committee report when no such note exists. This has made of the reason leading to the suspension and initiation of the disciplinary enquiry against the petitioner.

f) The petitioner then mounted his case on the facts stating that there was an old complaint regarding the fellowship selections held in 2005 by the respondent No. 1 which has been introduced in the picture in order to sidetrack the petitioner. The petitioner contended that the said complaint has just become one reason to suspend the petitioner unnecessarily as the petitioner was no where involved in the entire process of selection.

g) The petitioner describes that the respondent holds the prestigious fellowship

project that awards fellowships to senior scholars of repute and junior ones. In the year 2003, the advertisement was issued inviting application for fellowships. In 2004, the joint secretary in the Ministry of Culture was given additional charge as Director of respondent library. It is submitted that although October 20, 2003 was the last date of submission of the application but the respondent is empowered to offer the fellowship even to the non applicant.

h) The petitioner stated that on June 25, 2004, the group of the academics wrote to the ministry seeking postponement of the interviews relating to the section process. Thereafter acting upon the same, the joint secretary, Ministry of culture who was then the director had taken the decision to postpone the same. The petitioner said this is another cause of enquiry and the petitioner is being accused of the postponement of the said interviews despite the fact that he has no role to play and rather the decision was taken at the highest level.

i) The petitioner narrated that the new selection committee was formed after change in the executive council. The new selection committee has also considered some applications of the applicants even beyond the date notified. The petitioner also stated that one such application has also been received by the office of the petitioner which has been forwarded for the appropriate action. The petitioner is unnecessarily dragged into the enquiry when the petitioner was also not concerned with the selection process or considering any such belated application is the stand of the petitioner.

j) Pursuant to the said selection process, the petitioner has averred that the disappointed candidates have complained to an MP who then referred the matter to the petitions committee. The petition committee reported that the selection process was distorted. Similarly, the parliamentary standing committee also recommended that the said selection process is not devoid of problems.

k) A fact finding committee was appointed after the negative results given by the two reports. The fact finding inquiry headed by Mr. V.P. Dutt had also found the role of the director and deputy director questionable.

l) On 30th April 2009, the petitioner was informed that he was being suspended as there was a disciplinary proceedings pending against him. The petitioner thereafter sent the representation to the executive council/disciplinary authority asking the grounds of his suspension.

m) On 18th May 2009, the petitioner herein moved to the appellate authority by filing the appeal against the said suspension order. Thereafter the appeal authority conducted the hearing of the petitioner on 29th June 2009. The said hearing was postponed as the respondent has refused to attend the said hearing.

n) On 22nd June 2009, the petitioner was served a copy of the charge-sheet comprising six articles. The suspension order dated 30.04.2009 was further extended on 29th July 2009 extending the same for further period of 180 days. In the meantime, the petitioner's appeal was pending.

o) The petitioner had filed a writ petition earlier before this Court under Article 226 of Indian Constitution praying the revocation of the suspension wherein by way of order dated 20.08.2009 this Court directed the appeal authority to expeditiously dispose of the petitioner's appeal.

p) Thereafter, once the appeal was not timely disposed of, the petitioner filed this fresh writ petition challenging the suspension order and charge-sheet.

q) The petitioner challenged the said suspension order on the grounds as under:

? That the order of suspension has been made under malafide consideration as the petitioner had protested against the director of the respondent No. 1 decision to divest the powers of the director

? The impugned order of suspension suffers from the vice of the arbitrariness in as much as even the fact finding inquiry report was not fully complied with and only the petitioner is singled out.

? In the present case, there was no circumstances necessitating the suspension as the petitioner is not likely to do anything to the detriment to the respondent organization and the petitioner had done any misconduct earlier also. Thus, the order of suspension is clearly malafides, arbitrary and backed by ulterior motives.

? The petitioner sought to justify all the six charges by giving the detailed replies which are discussed below.

? That the charges against the petitioner are vague, baseless and trivial.

? The petitioner is being singled out and thus made to suffer against the persons who have their direct involvements in the said alleged charges when the said decisions were made.

2. The charges as framed against the petitioner are set out as under:

Article I

That the said Shri N. Balakrishnan while functioning as Head, Research and Publications Division (HRPD) and subsequently as Deputy Director at the NMML during the years 2000 and onwards, committed misconduct in as much as that, vide letter dated 7th July 2004 he unauthorisedly got the interviews of shortlisted candidates for the award of fellowships postponed. This decision to postpone the interviews, which was scheduled for 10th July 2004, was taken without seeking any approval from the Chairman, NMML Executive Council, since only the Executive Council was vested with such authority. This charge is further proved by the fact that the decision to postpone the interviews was not reported to the Executive Council at its meeting held on 2nd August 2004. By this act, he effectively stopped the functioning of the fellowship programme for promoting high quality research through award of fellowship at the level of Senior Fellow, Fellow and Junior Fellow.

Thus by doing so, Shri N. Balakrishnan, Deputy Director NMML committed a

serious misconduct and thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as applicable to NMML employees, whereby every Society servant at all times maintain devotion to duty, and do nothing which is unbecoming of a Society servant.

Article 2

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri n. Balakrishnan, Deputy Director NMML committed another serious misconduct in as much as when the selections did take place after the formation of new Executive Council, which nominated a new Fellowship Selection Committee for recommending the selection of Fellows, he by a series of acts ensured that the selection of candidates for Fellowships was not conducted in a fair and transparent manner in order to bring undue favour to two candidates namely, Prof. Neerja Gopal jayal and Dr. Dilip Simeon for the posts of Senior Fellow.

Thus by misleading the Executive Council in the above manner, Shri N. Balakrishnan, Deputy Director NMML committed serious misconduct and thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as applicable to NMML employees, whereby every Society servant shall at all times maintain devotion to duty, and do nothing which is unbecoming of a Society servant.

Article 3

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri N. Balakrishnan, Deputy Director NMML, committed serious misconduct in as much as that he misled the new Executive Council by not placing full facts before it while getting the Executive Council to appoint a new Fellowship Selection Committee for appointment of Fellows.

Thus by deliberately, withholding vital information from the Executive Council with a view to misleading it, Shri Balakrishnan, Deputy Director NMML, committed serious misconduct and thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as applicable to NMML employees, whereby every Society servant shall at all times maintain devotion to duty, and do nothing which is unbecoming of a Society servant.

Article 4

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri N. Balakrishnan, Deputy Director NMML, again committed misconduct in as much as that, he misused his authority and manipulated the records and the selection process for selection of Fellows by unauthorizedly operating upon the 18-month old list of applicants without going in for re-advertisement and unauthorizedly assumed the role of coordinator without seeking any approval of the Selection Committee which met on 4th March 2005 and brought undue favour to two candidates namely Prof. Neerja Gopal Jayal and

Dr. Dilip Simeon by receiving and admitting for consideration their applications for the post of Senior Fellows on 2 May 2005 and 9 May 2005 respectively, nineteen months after the cut off date thereby denying opportunity to suitable candidates who may have come up in the meanwhile to apply for these posts. Both these applicants were selected for the post of Senior Fellow at the NMML.

Thus by doing so, Shri N. Balakrishnan, Deputy Director NMML, committed serious misconduct and thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as made applicable to NMML employees, whereby every Society servant shall at all times maintain devotion to duty, and do nothing which is unbecoming of a Society servant.

Article 5

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri N. Balakrishnan, who was at that time holding the post of Head, Research and Publication Division and was the senior most officer of NMML, misused his authority by misleading the Executive Council in order to favour himself for appointment as Deputy Director in as much as he misinterpreted the recommendations of the Damodaran Committee Report through an Explanatory Note accompanying the proposal for amendment of the Recruitment Rules as well as an earlier proposal by Dr. O.P. Kejriwal, the then Director NMML before the meeting of the Executive Council held on 25th January 2005 and thereby got the Recruitment Rules for the post of Deputy Director, NMML amended on a faulty logic from "Direct Recruitment" to "Departmental Promotion, failing which by Direct Recruitment" which was done to tailor make the eligibility criteria to get himself fitted to the requirement for the said post thereby misusing his authority for personal gain.

By conducting himself in the above manner, Shri N. Balakrishnan, Deputy Director NMML, committed serious misconduct and thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as applicable to NMML employees, whereby every Society servant shall at all times show devotion to duty and do nothing which is unbecoming of a Society servant.

Article 6

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri N. Balakrishnan, who was at that time holding the post of Deputy Director committed misconduct by willfully disobeying the orders of the Director and was found in unauthorized possession of official files and documents of NMML. This came to light when a committee made an inventory of items found in the office of Shri N. Balakrishnan, Deputy Director subsequent to his suspension by the disciplinary authority.

By his above act Shri Balakrishnan, committed a serious misconduct and thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as applicable to NMML employees.

3. The petition was listed on 9.12.2009 when this Court issued notice in the petition. The Respondent No. 1 and 2 have filed their counter affidavit by justifying the suspension order and charge sheet on the following grounds:

a) The respondent contended that the petitioner has not placed the complete facts before the court. It is submitted that the petitioner suspension is not totally irrational one but rather there is a complete basis for lodging the disciplinary enquiry against the petitioner which leads to his suspension. It is pointed out that the action of the respondent was in pursuance to the findings and directives of the petitions committee of 14th Lok Sabha contained in its 44th report which was forwarded to respondent for compliance by the Ministry.

It is stated that the said committee report examined the irregularities and manipulations on the petition of Some Mr. S.P. Singh in relation to the Fellowship selection which has been conducted from the year 2003 to 2005. The respondents submitted that the report observed the practices adopted by NMML to annul the list of candidates shortlisted by previous committee and also observed the applications of Some Candidates like Mr. Dilip Simeoon and Ms. Nirja Jayal has been entertained beyond time even after 19 months of the expiry of the last date of the receipt of the application. The respondent contended that the petitioner is involved in entertaining the late applications of these two individuals and thus the same is required to be inquired into for which the inquiry has been lodged after suspension as per the due recommendation of the committee and asking of Central vigilance Commission.

Likewise the respondent contended that the parliamentary standing committee of Ministry of culture also questioned the selection process of senior fellows on the similar counts and recommended the probe into the selection process. Thus, the respondent contended that the inquiry is not baseless but rather is backed by three source recommendation.

b) The respondent further submitted that not merely on the basis of the recommendations of the committees, the respondent have initiated the inquiry against the petitioner. But the respondent No. 2 has again appointed a fact finding inquiry prior to the inquiry against the petitioner in order to ascertain the complete facts. The fact finding inquiry is conducted by Shri V.P. Dutt who is stated to be well known academician and fellow of the respondent institution.

The respondent stated that the said fact finding inquiry recorded that there is delayed acceptance of the applications and also named the petitioner in its report for belated acceptance of the applications and also the acceptance of the application without any authority. There is finding in the report that the actions of the director in charge and deputy director at that time were palpably malafide. Thus there is also the finding that the prima facie case is made out to institute the disciplinary action against both the director in charge and deputy director.

The respondent submitted that in view of all the events including the fact finding inquiry preceding the disciplinary inquiry categorically finding the actions of then

deputy director as bad, the said initiation of the inquiry and charges cannot be said to be baseless as contended by the petitioner.

c) The respondent contended that the charges leveled against the petitioner also disclose cause against the petitioner. The petitioner is stated to have sent the letter dated 7.7.2004 to the shortlisted candidates regarding the postponement of the interviews which was not even informed the executive council of the society. Thus, the charges be it anyone is not without any evidence but are backed by the recommendation, factual analysis and the evidence in support thereof.

d) Likewise, the respondent submitted that the fact finding committee recorded that the application of the Ms. Nirja Jayal was received on 2.5.2005 by the petitioner where as the deadline was 20.10.2003. The petitioner was promoted as Deputy Director on 17.3.2005 and after his promotion, the petitioner accepted the application of Ms. Jayal and shortlisted her despite the fact that she has not applied for. The said finding and events also formed another basis of Article 4 of the Charge.

e) The respondent submitted that in view of the well reasoned inquiry and charges coupled with imputation backed by the evidence, the interim suspension pending the inquiry and the inquiry itself cannot be faulted with. The respondent contended that judicial review of the cases involving the disciplinary action is extremely limited and the present case does not warrant the court's interference.

4. Learned Counsel Ms. Nitya Ramakrishnan appeared on behalf of the petitioner and has made the following submissions:

a) Firstly, Learned Counsel submitted that the disciplinary inquiry launched by the respondent ought to be quashed by this Court as there is no ground made out to launch the said disciplinary inquiry.

b) Learned Counsel submitted that the said disciplinary inquiry is backed by the malice as the petitioner has opposed the steps taken by the director of the respondent to divest the petitioners powers as deputy director to someone else. The petitioner contended that malice of the respondent can be highlighted on following counts:

a. The petitioner is charged with doing such acts for which he was not vested with power to perform such acts.

b. The charges made are trivial or baseless

c. The petitioner is being singled out in the enquiry and no other person against whom such enquiry is initiated although the fact finding inquiry report is against some other persons also.

4. Learned Counsel for the petitioner has relied upon The Regional Manager and Another Vs. Pawan Kumar Dubey, to inform the court that the Malice in Law is also the ground for interference and also submitted that the present acts of the

respondent by charging the petitioner without the legally tenable ground is malice in law.

5. The reliance was also placed on the matter of E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another, to urge that this Court in appropriate case where the differential treatment is accorded like the present one can direct the government to initiate the same inquiry against the other delinquent officers or else quash the suspension order.

6. Likewise the petitioner also put strong reliance on Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah, wherein this apex court set aside the penalty wherein one person is singled out as against the others by upholding the order Division Bench.

7. The learned Counsel for the petitioner further argued that the charges that are framed as baseless. The petitioner counsel explained the situation wise as to the reasons as to why the charges against the petitioner cannot be said to be made out. Such situations can be enlisted as under:

? The first article of charge was sought to be justified by the petitioner that the allegation of the postponing the selection process is completely baseless in as much as the director had the authority to postpone the selection process and not the petitioner. The petitioner also denied that the petitioner was the deputy director at the relevant time when the selection process was carried on. Thus, the petitioner stated that the first charge is complete baseless.

? Petitioner commented on the second charge of favouring two candidates that the said charge is also baseless. The petitioner had nothing to do with selection process. The executive council appointed selection committee which is involved in selection process, The petitioner also denied the allegation of influencing the decision to accommodate the candidates to their benefit.

? The petitioner stated that third article of charge that the petitioner withheld some facts from the executive council is equally baseless as the petitioner is not under duty to inform the executive council.

? The petitioner responded the fourth charge which alleged that the petitioner assumed the role of the coordinator that he did not readvertise the process of selection of fellows and operated under 18 months old list. The petitioner stated that the petitioner has not accepted any such belated application beyond the date. Out of 10 applications, 1 application has been also received by the office of the petitioner which was handed over for processing. In these circumstances, it cannot be said that the said application has been accepted by the petitioner belatedly. The role of coordinator to the petitioner was given by the director to be performed.

? The fifth article of charge states that the petitioner mis interpreted the Damodaran committee report and given some explanatory note, to which the petitioner response is that the said explanatory note does not exist. The

Damodaran committee recommended that the more posts should be filled up through departmental promotion in order to avoid stagnation. Further, the petitioner states that the director is responsible for this and not the petitioner.

? The petitioner deals with the last charge wherein the petitioner is alleged to have found in unauthorized possession of official files and documents of the respondent No. 1. The petitioner just denied the said charge by stating that there was no complaint of returning documents when asked. The charge is also criticized to be trivial.

8. Thus the learned Counsel for the petitioner submitted that the charges framed against the petitioner are baseless or are so trivial which do not warrant suspension and nor even require enquiry by the disciplinary authority.

9. The decision in *Zunjarao Bhikaji Nagarkar v. Union of India* AIR 1999 SC 288 is relied upon wherein para 42 the court observed that the disciplinary proceedings against an officer cannot take place on an information which is vague and indefinite. The court also observed that the suspicion has no role to play and there must exist the reasonable basis to proceeding against the delinquent officer.

10. The learned Counsel strenuously argued that this Court should interfere in the pending enquiry as the appeal is filed by the petitioner wherein the appeal has preferred against the suspension order has called upon the respondents and in consultation thereof the decision is taken by the appeal board on 1.2.2010, thus the same also shows the malice on the part of the respondent.

11. Learned Counsel for the petitioner has made the submission that the charge sheet against the petitioner ought to be quashed as there is no rational basis for charging the petitioner. It is argued that the basis of the charge sheet is fact finding inquiry held by Mr. V.P. Dutt wherein there is no allegation made against the petitioner. Thus, as per the petitioner's counsel, the charge against the petitioner ought not to have been framed.

12. Counsel for the petitioner has relied upon the following authorities wherein the court has exercised the judicial review on the basis of infirmities in the charges. The same are enlisted as under:

1) *R.C. Sood Vs. High Court of Rajasthan*, the court has found that there was no material on record to impute the petitioner and thus the court held that the pending enquiry is arbitrary and quashed the same.

2) *M.V. Bijlani Vs. Union of India (UOI) and Others*, The Hon^{ble} Supreme Court has held that the charges must be specific and the same cannot take into consideration irrelevant facts. The apex court quashed the enquiry where the enquiry officer enquired on something for which delinquent officer was not charged with and thus finding infirmity in charges.

13. Learned Counsel for the petitioner replied to the basis of the charges

explained by the respondent by stating the neither the fact finding committee report nor the petitions committee report mentions the name of the petitioner and rather the actions taken which were found improper were done by then director and not the petitioner. This according to the petitioner's counsel makes the charges baseless shows clear malafide.

14. The learned Counsel for the petitioner then proceeded to explain that although it is correct that the judicial review in the cases relating to departmental enquiry against the delinquent officer is extremely limited but the court has to apply different principles when faced with the different situations. It was argued by the learned Counsel for the petitioner that there is comparative shift when it comes to judging the administrative action based upon impingement of Article 14 which can be dissected in two parts:

1) When there is impingement of Article 14 on the ground of discriminatory or unreasonable classification.

2) When the administrative action is attacked on the ground of arbitrariness.

In the former, learned Counsel for the petitioner submits applies the doctrine of proportionality which balances the level of discrimination proportionately with that of the grievance. In other words, the power of judicial review in those cases are widened as the court can look into the reasonable differentia as to how a person has been discriminated against and what is the nexus with the object which is sought to be achieved by such action and then take the decision measuring it proportionately.

In the later, as per the learned Counsel for the petitioner, the court may still consider applying the Wednesbury reasonableness and in those cases, the court has to judge the same on the touchstone of the Wednesbury reasonableness.

15. The aid is drawn from the decision of the Hon'ble Supreme Court's decision in *Om Kumar and Others Vs. Union of India*, wherein it was held :

66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Hence the Court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

67. But where, an administrative action is challenged as "arbitrary" under Article 14 on the basis of *Royappa* (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has

acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular Vs. Union of India, , Indian Express Newspapers v. Union of India [1986] 159 ITR 856 , Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, and U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, while Judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on Wednesbury principles applies.

16. With this learned Counsel submitted that the present case falls both under former and later categorization as not merely the violation of Article 14 is contended on the count of being arbitrary but also discrimination and classification is also claimed by the petitioner, which allows this Court to judicially review the impugned decision to enquiry and chargesheet in a wide manner.

17. Per contra Mr. Prag Tripathi, learned ASG and Senior Counsel appearing on behalf of the Respondent has made his submissions which can be crystallized as under:

a) Mr. Tripathi, learned ASG firstly submitted that the departmental enquiry has been initiated after the three prong analysis and due recommendation of committees including petitions committee report, parliamentary standing committee report and CVCs asking after the recommendation of the petition committees report. Even thereafter the fact finding inquiry conducted by Mr. Dutt also yielded the similar result wherein there are finding about involvement of the petitioner in delaying the fellowship award selection process, accepting applications beyond deadlines etc which are also forming the part of chargesheet. Thus, as per learned ASG neither the interim suspension after due compliance of Rule 10 CCS rules nor the initiation of departmental enquiry, chargesheet can be faulted with which are all based on sound grounds.

It is thus submitted by the learned ASG that the Rule 10 empowers the respondent to suspend the petitioner when the respondent is contemplating enquiry or at the initiation of the enquiry. The said actions of the respondents are in due compliance of the rules. Like wise, the extension orders dated 29.07.2009 and dated 22.01.2010 are also in due compliance of the Rules which cannot be faulted with.

b) Learned ASG submitted that so far as charges are concerned, the same can be interfered by this Court only when the charges are vague and do not at prima facie disclose misconduct. In the present case, the learned ASG submitted that the charges are backed by the fact finding inquiry, thereafter the itemized charges, the date wise instances and happenings leading to imputations, all these have to be enquired into by way of the Disciplinary enquiry and the same cannot be merely put aside by this Court.

The reliance is placed on Dy. Inspector General of Police Vs. K.S. Swaminathan, wherein the apex court has held that the court has not to go into the truthfulness or otherwise of the charges and should confine itself only to enquiry in the judicial review as to whether the statement of facts, chargesheet supplied and material in support thereof disclose alleged misconduct. The court will not quash the charge memo by judging the charges themselves.

c) Shri Tripathi, Learned ASG further explained that the suspension per se is not stigmatic and rather is the part of the ordinary discipline and the same is with aim to enable the other employees to perform their job peacefully without dereliction of their duties. Thus, the said suspension order cannot be faulted with as the respondent being the autonomous body has its own liberty to maintain discipline.

d) Learned ASG argued that the extent of judicial review in the departmental enquiry cases also more so when it relates to suspension pending the enquiries is extremely limited and the court by exercise of judicial review cannot interfere with the suspension order unless the same is passed malafide and there is apparent evidence of no connection of the delinquent employee with the misconduct in question. As per learned ASG both the criterion are not met with as there is no malafide and also there is sufficient evidence on record to show the connection of the petitioner with that of the misconduct in question.

Learned ASG has relied upon the judgment passed by apex court in U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, wherein the apex court observed "Whether the employee should or should not continue in their office during the period of the enquiry is a matter to be assessed by the authority concerned and ordinarily the court should not interfere with the orders of the suspension unless they are passed malafide and without there being prima facie evidence on record connecting the employees with the misconduct in question.

e) Learned ASG submitted that the malice as alleged by the petitioner has to be specific against the person specific and must disclose the events by which such malice has been exercised upon the petitioner. Further, the said person must be made party to the proceedings and must be stated in the petition. If that is not so, no malice in general can be attributable to the respondents.

The learned ASG relied upon Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others, wherein the apex court observed that allegations of malafide are serious in nature and they essentially raise a question of fact. It is

therefore, necessary for the person making such allegation to supply full particulars in the petition. If the sufficient averments and requisite materials are not on record, the court would not make fishing or roving enquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be malefide.

f) The learned ASG concluded his submission by stating that the scope of judicial interference in the cases involving departmental enquiry is extremely limited. The court has to look into the same from the perspective of wednesbury reasonableness only. Learned ASG also submitted that till the time there is a disclosure of misconduct, the person initiating the enquiry is competent, the charges are supported by material on record, the court cannot interfere in the pending enquiry unless the court arrives at the conclusion that there is an element of malice and/or arbitrariness.

18. Learned Counsel for the Respondent No. 3 Mr. Peyoosh Kalra also made his submissions and relied upon the submissions of learned ASG.

I have noted the submissions made at bar by the parties and also given my careful consideration to the petition filed by the petitioner, the counter affidavit of respondent No. 1 and 2 and separate counter filed by the respondent No. 3. Before coming to my findings, I deem it appropriate to analyze the law on the subject.

19. Firstly, it is now trite that the judicial review in cases relating to departmental enquiry is extremely limited. The same is confined to adjudging the lack of jurisdiction, jurisdictional error, reasonableness of the decision, arbitrariness, discriminatory, violation of principles of natural justice, malice. (Kindly see B.C. Chaturvedi Vs. Union of India and others,

20. Secondly, it also needs no reiteration that the interference in the pending enquiry is discouraged unless the enquiry is vitiated being actuated by malice (including malice in law and malice in fact), arbitrariness, discriminatory, patent lack of jurisdiction, vagueness of charges and charges contrary to the law, the supportive material being not commensurate to the charges.

21. In State of Orissa Vs. Bimal Kumar Mohanty, it was held by supreme court:

The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or

enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry.

Thirdly, in relation to order of suspension, the courts have from time to time held that the suspension is not stigmatic and will not ordinarily be interfered with except in cases where the suspension is passed malafidely and in cases where there is no supportive material on record connecting the employee with that of the misconduct.

Fourthly, The law relating to quashing of charges is also explicitly discussed by Apex Court in *Dy. Inspector General of Police Vs. K.S. Swaminathan*, wherein the apex court has held that the charges can be interfered in the judicial review when they are vague and should not be contrary to the law. The court will not go into the truthfulness or otherwise of the charges at the time of examination of charges in a pending enquiry. (kindly see *Surath Chandra Chakrabarty Vs. State of West Bengal*, *Sawai Singh Vs. State of Rajasthan*, *Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy*,

Fifthly, It is also to be kept in mind that the writ court is not fact finding court. The writ court will not go into factual enquiry and then adjudicate the correctness or otherwise of the facts and rather would look the fairness, reasonableness of administrative actions and the taking away of any legal rights if any by virtue of the same. This has also been held in *Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan*, wherein the apex court observed:

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such

satisfaction of the Labour Court.

22. It appears from the facts and circumstances of the above mentioned cases wherein the Apex Court found malafide in initiation of inquiry because the same was backed by politics. The Apex Court shown its concerns by commenting that the Court cannot shut its eyes when the malafides are so apparent as within few days of change of Government, the inquiry was initiated against the person belonging to rival party. These facts are missing in the present case.

23. Thus, unless the court records that the factual enquiry is required on account of perversity in the lower court finding, the fact finding is not permissible in exercise of Article 226 or Article 227.

24. Keeping these well settled principles in mind, I shall now deal with the submissions made by the parties and will answer the questions raised by the parties point wise:

a) The petitioner's contention that there is no ground for proceeding against the petitioner by the respondent and thus pending enquiry ought to be quashed at this stage is not sustainable. There is a material on record backed by the committee report, parliamentary standing committee report, fact finding report and other supportive material which enables the respondent to proceed against the petitioner a disciplinary enquiry. It is however another thing as to who may succeed in the pending enquiry. But to quash the enquiry when there is a material for the cause which the respondent is espousing is not feasible on this count.

b) The petitioner's contention that the charges are vague and baseless by giving justifications about the charges in itemized manner does not come within the four corners of the scrutiny by this Court. Firstly based on the material on record, the charges are in consonance with the fact finding report which has culminated into articles of charges. Further, the said charges are also elaborated in the form of imputations where in the dates and events are given with the facts. The petitioners saying that he was not the deputy director at that time is also disputed by the respondent. The respondent rather states that the petitioner was deputy director when the petitioner accepted one belated application of the person seeking fellowship which is also one of the charges. Hence, it is doubtful to say that the charges are vague and interfere with the same without continuance of the enquiry is not proper.

c) The petitioner also sought to urge that the charges are false, baseless and trivial by stating that the due to reason explained by him, none of the charges remains. It is again not a good ground to quash charges by going into truthfulness or falsity of the charges. The moot question is as to whether the charges disclose the misconduct and the same is in consonance with the supportive material and not contrary to the law. If that be so, then charges will remain and the court may order continuance of the enquiry which is the situation in the present case.

d) The petitioner has argued at great length on arbitrariness as the suspension order and the charges framed as arbitrary in as much as the same is actuated by the malice and without any basis. The malice has to be specifically averred as held by the apex court and has to be specific enough to state as to who has exercised the malice and the courts have to go to the extent of saying that the same person must also be made party to prove the clear allegation of the malice. In the present case, it is doubtful as to against whom the petition is claiming malice. It may be the malice on the part of then director or other superiors at that time or the malice at the part of the current executive council who has taken decision of interim suspension or to initiate the enquiry on the recommendation of petitions committee and parliamentary committee report or the malice at the part of the current director who is still in not good terms with that of the petitioner with some issues on divesting the powers as contended by the petitioner itself in the petition. Further, it is unclear without evidence at this stage to state clearly whether the decision of suspension was taken extraneous to the legal situation which is test for malice in law. Thus, neither the factual malice nor legal malice in the present case is clearly shown which enables this Court to go into the question of arbitrariness on account of the malice. The question of baseless grounds already stands answered. There is no arbitrariness overall in the decision making process of the interim suspension order which is also in consonance with the rules.

e) It can also not be said with certainty that the petitioner is singled out from that others involved in the same happening of event. This is more so when the petitioner is duly proceeded against after framing of charges and imputation duly given to him. The enquiry is still carrying on. At this nascent stage of the enquiry, it is rather premature to state that there is element of discrimination. It may be possible that during the continuance of the enquiry and disclosures made therein or otherwise, the other persons involved may be proceeded against. Thus, the petitioner's insistence to stall the enquiry till the time respondent proceeds against the others without having specific persons, allegation at this stage is not tenable. However, the petitioner is at the liberty to urge this plea with the specific allegation before the disciplinary authority and in any subsequent proceedings if need arises.

f) In relation to the question of applicability of proportionality and wednesbury reasonableness on administrative action, there is no quarrel to the said proposition and their respective applicability. In view of my conclusion that the impugned suspension order and decision making process is neither discriminatory nor arbitrary, the same is squarely covered by both the tests as argued by the petitioner.

g) There are not even the circumstances warranting the quashing of interim suspension and charge sheet as the said suspension order is not passed malafidely and also is in consonance with the material placed on record.

h) Lastly, the appeal filed before the appeal authority against the suspension

order has also been disposed off by the order wherein the appeal authority also came to conclusion which seems to favour the petitioner somewhat but the appeal authority also ordered that the enquiry must go unhindered. Thus, this Court also holds the same view that all the factual inquiries which require evidence must be decided by the disciplinary authority fairly and disciplinary enquiry must carry on.

25. The petitioner has also referred the following judgments:

- a. In Re: E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another,
- b. State of Punjab Vs. V.K. Khanna and Others,

As far as the decision referred by the petitioner in the matter of T.V. Choudhary (Supra) is concerned, the Apex Court interfered with the departmental inquiry on violation of Article 14 of Constitution of India. The Apex Court was concerned with the order passed on the earlier date when the Court directed the concerned Government to seek instructions about the initiation of inquiry against second person as both were involved in the matter. The Government in that case agreed to initiate the inquiry subject to instructions. Therefore, the Hon'ble Apex Court confirmed the earlier order and did not laid down any guideline in respect thereof and rather proceeded to discuss the role of counsel towards the Courts and duty towards the client. Therefore, the said decision does not help the case of the petitioner in the present matter.

As regard the second case i.e. State of Punjab is concerned, the learned Counsel for the petitioner has referred paras 33 and 34 in support of his submission which read as under:

33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting

bias - what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply - is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

26. In view of the aforementioned discussion, there is no ground made out to interfere with the impugned suspension order dated 30th April 2009 and charge sheet dated 22.6.2009 and thus the present petition is hereby dismissed. However, it is made clear that any finding given in this order shall have no bearing in the proceedings pending against the petitioner on the basis of suspension order dated 30.04.2009 and charge sheet dated 22.06.2009 and those would be determined as per its own merit as per the respective pleas urged by the parties.

No orders as to costs.