

(2019) 09 DEL CK 0324

In the Delhi High Court

Case No : Civil Writ Petition No. 9623 Of 2019

K.L. Meena

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 4(1), 4(3)

Citation : (2019) 09 DEL CK 0324

Hon'ble Judges : G.S. Sistani, J; Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Shankar Raju, Shiv Prakash Pandey, Sharmistha Chaudhary, Anjana Gossain, Anshuman

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CM APPLs. 39713 & 39714/2019 (exemptions)

1. Exemptions are allowed subject to all just exceptions.

2. Applications stand disposed of.

W.P.(C) 9623/2019

3. This petition has been filed by the petitioner under Article 226 of the Constitution of India for quashing the order dated 26.08.2019 passed by the Central Administrative Tribunal.

4. Counsel for the respondents enters appearance on an advance copy.

5. With the consent of both the parties, the writ petition is set down for final hearing at the admission stage itself.

6. The necessary facts required to be noticed for disposal of this writ petition are

that the petitioner was appointed as an Air Worthiness Officer in the Civil Aviation Department in August, 1994. He was promoted to the post of Deputy Director of Air Safety in the year 2010. Thereafter, petitioner was transferred from Delhi Region to Mumbai (Western Region) as Deputy Director, Air Safety. As required under the norms of Directorate General of Civil Aviation (DGCA), since the petitioner's son intended to learn flying, the petitioner vide a letter dated 11.07.2014, intimated that his son was intending to learn flying from Pioneer Flying Academy, Aligarh (U.P.) and that the flying club would come under his jurisdiction.

7. Subsequently, he informed DGCA vide communication dated 03.11.2014, that his son had not been pursuing flying lessons from Pioneer Flying Academy, and had instead joined Nagpur Flying Club, which was a State Government Flying Club. In the said communication, the petitioner clearly stated that he has no official dealing with the club.

8. Since the DGCA found the information provided by the petitioner to be incomplete and vague, and no reasons thereto assigned for switching of training academies, the details as to how the flying training was being financed were sought from the petitioner, vide DGCA communication dated 31.12.2014.

9. Subsequently, the petitioner vide his communication dated 28.02.2016 further intimated that since Nagpur Flying Club was non-operational, his son had decided to join the Madhya Pradesh Flying Club, Bhopal. In his communication, he failed to mention that the said club fell under his jurisdiction i.e. the Mumbai office. Whereas, in his previous letter dated 03.11.2014, the petitioner had clearly mentioned that he had no official dealings with Nagpur Flying Club.

10. The petitioner, informed vide his communication dated 03.06.2016, that his son had completed the flying training and obtained CPL from DGCA on 02.06.2016. He further informed vide communication dated 15.06.2016 that his son had joined the Madhya Pradesh Flying Club, Bhopal for Multi Engine Training.

11. During the period when the petitioner's son had joined the Madhya Pradesh Flying Club, Bhopal for Multi Engine Training, the petitioner was posted in the Western Region, DGCA as Deputy Director (Air Safety) and as per the work allocation order dated 30.03.2016, the work of Madhya Pradesh Flying Club, Bhopal was under his jurisdiction from 30.03.2016 to 20.06.2016.

12. Accordingly, the petitioner vide memoranda dated 30.10.2018 and 19.11.2018, was requested to clarify his position with regard to allocation and continuance of holding of charge of the work of Madhya Pradesh Flying Club, Bhopal during the training of his son in that institute.

13. The statement of imputation of misconduct or misbehavior in support of Article of Charges enclosed alongwith the memorandum dated 26.04.2019 against the petitioner clearly state that the communication sent by the petitioner dated 08.11.2018, 22.11.2018 as well as the correspondence dated 22.11.2017

received from O/o DDG (WR), Mumbai were examined and it was observed that the petitioner was looking after the work of Madhya Pradesh Flying Club relating to Air Safety and was in a position to influence the admission process of his son, which was under his jurisdiction during the said period of time. It was observed that it was a clear case of conflict of interest and the petitioner deliberately concealed vital information to derive personal benefit in this case.

14. The memorandum dated 26.04.2019 issued by Director General, Ministry of Civil Aviation, Government of India to the petitioner states that that an inquiry would be held against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 due to the alleged violation of Rules 4(1) and 4(3) of CCS (Conduct) Rules, 1964 alleging that the petitioner's son has undergone training at the Madhya Pradesh Flying Club during the period when the petitioner had jurisdiction over the club and that the training led to employment of his son.

15. Rules 4(1) and 4(3) of CCS (Conduct) Rules, 1964 are reproduced hereinunder:

"4. Employment of near relatives of Government servant in Companies or firms-

4(1) No Government servant shall use his position or influence directly or indirectly to secure employment for any member of his family in any company or firm;

4(3) No Government servant shall in the discharge of his official duties deal with any matter or give or sanction any contract to any company or firm or any other person if any member of his family is employed in that company or firm or under that person or if he or any member of his family is interested in such matter or contract in any other manner and the Government servant shall refer every such matter or contract to his official superior and the matter or contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made."

16. Aggrieved by the order dated 26.08.2019 passed by the learned Central Administrative Tribunal (CAT) by which the O.A. No.2522/2019 filed by the petitioner herein was dismissed, the petitioner has filed the present writ petition.

17. We have heard learned counsel for the parties and have considered their rival submissions. The law is well settled on the issue of quashing of a charge-memo issued to a delinquent employee. A charge-sheet/ charge-memo is not liable to be quashed during the pendency of the departmental enquiry of the delinquent employee. In case the said employee has some grievance in respect of the charge-sheet, he must raise the issue by filing a representation and wait for the decision of the disciplinary authority.

18. It is well-settled that as the issuance of a charge-sheet does not constitute a cause of action, a writ petition, ordinarily, does not lie against it. The same does not amount to an adverse order which affects the right of any party, unless the

same has been issued by an authority, which does not have the competence or the jurisdiction to do so.

19. The Supreme Court in the case of Secretary Ministry of Defence & others Vs. Prabhash Chandra Mirdha, (2012) 11 SCC 565 has held as under :

"10. Ordinarily a writ application does not lie against a charge-sheet 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, charge-sheet 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 charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court.

12. Thus, the law on the issue can be summarised to the effect that charge-sheet 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 charge-sheet 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."

20. In the case of State of Orissa and another Vs. Sangram Keshari Misra and another, (2010) 13 SCC 311, the Supreme Court held as under :

"10. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as normally a charge sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority (vide Union of India v. Upendra Singh SCC p.362, para 6). Therefore we reject the contention that the charge ought to have been quashed without reserving to the State to proceed in accordance with law."

21. Applying the law to the facts of the present case, we are satisfied that there is no infirmity in the order passed by the Tribunal which requires interference in these proceedings.

22. In view of the above discussion, the writ petition is devoid of any merit. The same is dismissed accordingly.

CM APPL. 39712/2019 (stay)

23. In view of the order passed in the writ petition, the application stands

dismissed.