

(2009) 04 CAL CK 0057

In the Calcutta High Court

Case No : A.P.O. No. 173 of 2007 and W.P. No. 62 of 2007

Prabhat Kumar Chakravarty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Right to Information Act, 2005 — Section 8

Citation : (2010) 2 CALLT 72

Hon'ble Judges : Sadhan Kumar Gupta, J;Pratap Kumar Ray, J

Bench : Division Bench

Advocate : Subir Sanyal and Mr. Sutirtha Das, for the Appellant;Arijit Choudhury and Mr. Alope Banerjee and Mr. A. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Challenging the judgment and order dated 12th April, 2007 passed by the Learned Trial Judge in writ petition No. 62 of 2007 along with other two applications G.A. No. 602 of 2007 and G.A. No. 674 of 2007, this appeal has been preferred by the writ petitioner as appellant. Writ application stood dismissed by a reasoned decision on considering the limitation to exercise the power of judicial review by the writ Court with reference to challenge of a charge- sheet to set it aside at the initial stage as issued by initiating a departmental proceeding by the Competent Authority.

2. The challenge in the writ application is the charge memo in a departmental proceeding issued on 15th December, 2006 which read such:

RESERVE BANK OF INDIA

www.rbi.org.in

DAPM(Kol) Disc. 9134/03.50.01/2006-07

December 15, 2006

CONFIDENTIAL

Shri Prabhat Kumar Chakravarty

Assistant Manager,

(Emp. No. 0144, P.F. Index No. CC-0227)

Department of Statistical Analysis

And Computer Services.

Reserve Bank of India,

Kolkata

(Through The Director, DESACS, RBI, Kolkata)

Dear Sir,

Staff- Class-I-Discipline-Show Cause

1. Please refer to your reply dated November 16, 2006 to the show cause notice issued to you vide DAPM(Kol) Disc. 7190/03.50.01/2006-07 dated November 9, 2006. The undersigned has gone through the contentions advanced by you in your above letter and found that your reply to the show cause is not tenable and acceptable to the bank. You are, therefore, advised that the charge as set out in paragraph 3 below has been framed against you in the circumstances mentioned in paragraph 2 hereunder.

2. It has been noticed that along with your representation dated 9 August, 2006 (but signed on August 14, 2006) to the Appellate authority, the Regional Director, Kolkata, in connection with the Charge sheet vide DAPM(Kol) Disc. 14256/03.50.01/2004-05 dated May 05, 2005, you enclosed a copy of one sensitive and secret document containing the signatures of the officers of the PAD, RBI, Kolkata, which you procured without having prior permission of the Bank while discharging your duties as Assistant Manager, General Section of PAD, RBI, Kolkata. You were not entitled to acquire/possess the same for your personal use without permission of the Bank. Further, your acquisition of the document from the department has also been admitted by you in your aforesaid representation dated August 09, 2006. Your reply is not therefore, convincing and tenable, rater misleading. Your above act amounts to pilferage of official documents.

3. You are, therefore, charged with having committed acts of gross misconduct and indiscipline and thereby acting in a manner detrimental to the interests of the Bank by contravening Regulation 33 of the Reserve Ban of India (Staff) Regulations, 1948.

4. Your said act amounts to misconduct within the meaning of Regulation 47(1) of the Reserve Bank of India (Staff) Regulations 1948. You have thus rendered

yourself liable for disciplinary action and this charge-sheet is accordingly issued to you under Regulation 47 of the Reserve Bank of India (Staff) Regulations 1948.

5. You are hereby called upon to answer the above charge in writing or in person within 10 days from the date of receipt of this charge-sheet. In the latter case, your defence will be taken down in writing and read out to you.

Yours faithfully,

Sd/- Illegible

(Lily Vadera)

Deputy Manager (Banking)

3. The said charge memo has been challenged on the ground that the relevant document containing signatures of officers of Public Accounts Department, Reserve Bank of India, Kolkata which admittedly was procured without prior permission of the Competent Authority and submitted before a superior authority namely the Appellate Authority, the Regional Director, Kolkata with reference to grievance against another charge-sheet dated 5th May, 2005, practically was not a sensitive and secret document since the said document which was submitted on 9th August, 2006 to the appellate authority was supplied to the petitioner under The Rights to Information Act, 2005 by the Competent Authority of Reserve Bank of India namely the Chief Public Information Officer by his communication dated 15th September, 2006. The communication dated 15th September, 2006 read such:

RESERVE BANK OF INDIA

www.rbi.org.in

DAPM. Co. RIA. 1564/07.50.01/2006-07

September 15, 2006

Shri Prabhat Kumar Chakravarty

C/o. Reserve Bank of India,

Public Accounts Department,

N.S. Road,

Kolkata-700 001

Dear Sir,

The Rights to Information Act, 2005 -

Query Our Ref. No. RIA 232/2006-07

Please refer to your application dated August 21, 2006, submitted at Kolkata Office.

In this matter we advise the following.

1. The system of maintaining a delivery book for such type of intra-departmental communication did not exist in PAD, Kolkata. It may also be mentioned that you were posted in the capacity of Staff Officer (general section) and one of your duties was to receive all letters/ circulars (both internal and external) and put it up to Assistant General Manager for perusal and necessary action.
2. The label on the Inward dak-box (inward letters received from all sources) is non-permanent in nature. At the end of the month, a new label is pasted on the dak box. Therefore, we do not have information sought at serial No. 2 of your request.
3. The copy of signature sheet of all officers of PAD for relevant quarter is enclosed.

If you desire to prefer an appeal against this reply, the same may be preferred within 30 days of receipt of this letter to Dr. Rakesh Mohan, Deputy governor, Reserve Bank of India, Shahid Bhagat Singh Marg, Fort, Mumbai-400 001.

Yours faithfully,

Sd/- H.N. Prasad

H.N. Prasad

Chief Public Information Officer

Encl: As above.

4. It is the submission of the appellant before us that there was no element of misconduct for initiation of a departmental proceeding on the alleged ground of procurement of a document without prior permission of the appropriate authority, containing the specimen signatures of superior officers of Public Accounts Department and submission of the same on 9th August, 2006 to the Appellate Authority, the Regional Director, Kolkata in connection with another departmental proceeding. From the charge sheet under challenge it appears that it has been levelled for breach of Regulation 47(1) of the Reserve Bank of India (Staff) Regulation, 1948 read with Regulation 38 thereof, hereinafter referred to as Regulation for brevity. The Regulation 33 and 47(1) aforesaid read such:

33. Every employee shall maintain the strictest secrecy regarding the Bank's affairs and the affairs of its constituents and shall not divulge, directly or indirectly, any information of a confidential nature either to a member of the public or of the Bank's staff, unless compelled to do so by judicial or other authority, or unless instructed to do so by a super officer in the discharge of his/her duties.

47(1) Without prejudice to the provisions of other Regulations, an employee who commits a breach of the Regulations of the Bank, or who display negligence, inefficiency or indolence, or who knowingly does anything detrimental to the

interests of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to the following penalties:

- (a) reprimand;
- (b) delay or stoppage of increment or promotion;
- (c) degradation to a lower post or grade or to a lower stage in his incremental scale;
- (d) recovery from pay of the whole or part of any pecuniary loss caused to the Bank by the employee;
- (e) dismissal.

5. The Regulation 33 is under chapter IV with heading "Conduct, Discipline and Appeals" and more precisely u/s 1 thereof with the heading "conduct and discipline". The Regulation 33 mandates the employee concerned to maintain strict secrecy about the Bank's affair with a debarring clause not to disclose any document directly and indirectly to anybody and even to the Bank Staff, unless appropriate permission is accorded by the superior officer. The charge has been framed accordingly that on 9th August, 2006 when the document was procured without permission of the Competent Authority, it caused a breach of Regulation 33 to attract the misconduct defined thereto for appropriate departmental proceeding. The subsequent delivery/supply of the said document under Right to Information Act which has been taken as a stand to counter the charge sheet issued on the ground that there was no element of misconduct and/or no foundation thereof, was a document issued with proper permission of the Competent Authority satisfying the Regulation 33 and Right to Information Act. It appears from the record that when the document was procured on 9th August, 2006 the petitioner got no permission to procure it and to submit it to the superior officer, the appellate authority who is also the staff in terms of Regulation 33.

6. That became the cause of action of initiation of the departmental proceeding on the charges levelled against the delinquent writ petitioner. The charge-sheet contains following material facts:

- (i) Procurement of a document without prior permission of the Bank authority while the writ petitioner was discharging the duty as Assistant Manager, General Section of Public Accounts Department, Reserve Bank of India. Kolkata.
- (ii) Under Regulation 47(1) which provides that a departmental proceeding could be initiated to impose the penalties specified thereto on the charge of misconduct, if somebody acts detrimental to the interest of the Bank or in conflict with the instruction of the Bank or commits a breach of discipline or any other action which to be considered as misconduct, the alleged act is attracted.
- (iii) Pilferage of Bank's document.

7. The document as has been supplied under the Right to Information Act, 2005 surely was not a document which enjoys exemption from disclosure in terms of section 8 of the said Act. Section 8 of the said Act read such:

8. Exemption from disclosure of information:

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen-

(a) Information, disclosure of which would prejudicially affect that sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) Information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court;

(c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

(e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) Information received in confidence from foreign Government;

(g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

PROVIDED that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

PROVIDED FURTHER that those matters which come under the exemptions specified in this section shall not be disclosed;

Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the

case may be, is satisfied that the larger public interest justifies the disclosure of such information.

PROVIDED that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Subject to the provisions of Clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made u/s 6 shall be provided to any person making a request under that section:

PROVIDED that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central government shall be final, subject to the usual appeals provided for in this Act.

8. Charge levelled against the delinquent as already discussed above are of two folds namely procurement of a document while discharging the duty without permission of the competent authority and secondly to use the same for personal use without permission of the Bank. The third ground of the charge has been summarized as pilferage of official document. The word pilferage is synonymous to theft.

9. In the writ application it has been alleged for the first time that the document was supplied by one Assistant General Manager, Public Accounts Department of the Bank. Paragraph 87 of the writ application is to that effect which reads such:

The petitioner has got a photocopy of the said document from the then Assistant General Manager, PAD of the Bank and detainment of the said document cannot constitute pilferage of official document or any misconduct within the meaning of the Staff Regulations.

10. Paragraph 87 has been affirmed as humble submission before the Hon'ble Court, which cannot be believed due to lack of proper verification. Reliance is placed to the judgment passed in the case A.K.K. Nambiar Vs. Union of India (UOI) and Another, .

11. In the writ application there is no disclosure about the name of the Assistant General Manager, Public Accounts Department. In the reply of first show cause prior to framing of the charge sheet, there was no whisper that the said document was supplied by any higher officer namely Assistant General Manager as has been alleged in the writ application.

12. On the aforesaid factual matrix it has been vehemently urged by the learned advocate for the appellant that there was no element of misconduct, as such, the departmental proceeding should be quashed by quashing the charge sheet.

Reliance has been placed for such prayer to the Division Bench judgment of this Court passed in the case *U.N. Biswas v. Union of India*, reported in 1998 (1) CLJ 505 wherein the Division Bench applied the test of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, to identify the issue whether allegation made in the Article of Charge and its imputation satisfied the foundational ground like the foundational ground of a First Information Report for commission of an offence to initiate a criminal proceeding. In the said judgment *U.N. Biswas (supra)* the Court held that in dealing with element of misconduct under service jurisprudence, the principle of *Bhajan Lal (supra)* was applicable. The view of the Division Bench in *U.N. Biswas (supra)* about applicability of ratio of *Bhajan Lal (supra)* in a departmental proceeding under service jurisprudence, in our view cannot be applied to identify whether alleged charge sheet in a departmental proceeding is legally sustainable or not. Further more in *Bhajan Lal (supra)* the Apex Court held that there should not be any pre-trial before trial but on the face value of the First Information Report the issue to be considered whether there was any element of criminal offence for continuation of criminal proceeding. This view of *Bhajan Lal (supra)* is being consistently followed by the Apex Court when a criminal proceeding is challenged seeking quashing of First Information Report and/or charge-sheet as the case may be either in writ jurisdiction under Article 226 of the Constitution of India or in the jurisdiction u/s 482 of the Code of Criminal Procedure. *BhajanLal* ratio could not be applied to scan charge memo of a departmental proceeding. It is a basic settled law that the penal statute requires a strict interpretation to identify any breach when any issue is raised before the Court of law. Departmental proceeding is not a criminal proceeding. It is civil in nature, where conduct of delinquent is only scanned.

13. *Bhajan Lal (supra)* guidelines in summary as in paragraph 102 of said report read such:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a

Magistrate within the purview of section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. On bare reading of said guideline it appears that the prima facie allegation to be looked into to identify whether any commission of offence is disclosed in the First Information Report to quash it. The same view reiterated by the Apex Court in the case K.L.E. Society and Others Vs. Siddalingesh, wherein the Apex Court cited the Bhajan Lal (supra). In the case State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , the Court held that the charge-sheet cannot be quashed on the logic that if the material factors were considered by the Court prior to trial it would be nothing but a pre trial before trial and by affidavit evidence in a writ application or in an application u/s 482 of Code of Criminal Procedure if the matter was adjudicated upon, same would amount to gross error, gravest in nature. Similar view has been expressed in the case Som Mittal Vs. Government of Karnataka, a judgment of three Judges Bench.

15. Beside such there is a basic difference of initiation of a criminal proceeding and intensity of judicial review to quash it at the pre-trial stage qua the initiation of a departmental proceeding by framing a charge memo on ground of misconduct and its judicial review. The charge memo on ground of misconduct is not a criminal proceeding and its continuation thereof is not in the angle of criminal jurisprudence. It is a settled legal position now that there is a basic fundamental difference in between a criminal proceeding for breach of penal statute and initiation of a departmental proceeding on the charge of misconduct, even if on identical facts two proceedings uninitiated and/or originated. Reliance is placed to the case Indian Overseas. Bank v. P. Ganeshan reported in (2008) 1

SCC 650, Depot Manager, Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., which was followed in Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, The Apex Court view is clear that the parameters of adjudicating process of departmental proceeding is completely different than the adjudication process and parameters thereof in a criminal proceeding. The initiation of departmental proceeding on the charge of misconduct is to scan the conduct of the delinquent under the service Regulation for the purpose of imposition of a penalty on charge of proved misconduct in the nature of dismissal, removal, censure, pay-reduction etc. as prescribed under the statute, service Regulation, whereas in a criminal proceeding the penalty imposed is imprisonment and/or fine as the case may be by identifying commission of offence, a wrong in rem, by following strict proof rule. In a criminal proceeding there may be curtailment of freedom right under Article 19 of the Constitution of India, so the adjudicatory process and its scrutiny level thereof is of higher degree and intensity. Hence, we are of the view that Bhajan Lal (supra) test could not be applied to quash a charge memo in a departmental proceeding initiated on the charge of misconduct.

16. The word "misconduct" has different connotation under the service jurisprudence. Practically it is a breach of discipline and no exhaustive possibilities could be enumerated to identify any indiscipline as misconduct. The misconduct as per definition of Black's Law Dictionary, Sixth Edition at page 999, read such:

A transgression of some established and definite rule of action a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Misconduct in offence has been defined as:

Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act.

As per P. Ramnath Aiyar's Law Lexicon reprint edition 1987 at page 821 "misconduct" has been defined in the following term:

The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some

established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public official, by which the rights of a party have been affected.

17. Learned Advocate for the appellant further has relied upon the case A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., . The decision of Kalra (supra) was considered in that factual angle and Kalra (supra) has been distinguished by the Apex Court in the case Secretary to Government and Others Vs. A.C.J. Britto, Paragraph 6 of the said report read such:

What was, however, contended on behalf of the Respondent was that in absence of any Rule treating non-compliance with an order of superior police officer or non-appearance before a Medical Board as an act of misconduct no disciplinary proceedings should have been initiated against him for the said act of delinquency. In support of this submission the learned Counsel relied upon the decision of this Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., . In that case, disciplinary proceedings were initiated against A.L. Kalra by the Corporation for committing an act of misconduct under service Rule 4(1) (I) and (iii) which prescribed that every employee of the Corporation shall at all times maintain absolute integrity and do nothing which is unbecoming of a public servant. Rule 5 prescribed various misconducts for which action could be taken against an employee governed by the rules. Taking note of the fact that Rule 4 was given the heading "General" and Rule 5 was given the heading "Misconduct" this Court took the view that the draftsmen of the Rules made a clear distinction about what would constitute misconduct. It was under these circumstances this Court observed that "failure to keep such high standard of moral, ethical) or decorous behaviour befitting an officer of the Company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5 Rule 4 was regarded as vague and of general nature and in that context it was further observed that where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. Construing the rules this Court held that "Rule 4 styled as "General" specifies a norm of behaviour but does not specify that its violation will constitute misconduct." Rule 4 was thus construed as not specifying a misconduct. Thus the decision in that case turned upon the scheme of those rules and the construction placed upon Rules 4 and 5 of those rules. This Court in that case has not laid down as a general principal that if an act is not specified by rules to be a misconduct then it cannot be regarded as such and an employee cannot be punished for committing such an act.

18. Now we have to consider the intensity of judicial review and parameters of

judicial review its limitation to quash a departmental proceeding as initiated by issuing the charge-sheet by the Competent Authority. In the instant case there is no allegation that the charge sheet has been issued by a person who has no jurisdiction. Further more there is no allegation of mala fide. Only point has been taken that since subsequently after issuance of show cause notice the concerned document was supplied under the Right to Information Act, as such there was no element of misconduct to proceed with the departmental proceeding.

19. To identify the issue we have to consider the implication of Rule 33 Of the Staff Regulation wherein it is provided that without permission of the Competent Authority or superior officer no employee would be entitled to procure a document and divulge it directly or indirectly not only to the public but also to the Bank's staff. The charge memo is with structural foundation of a breach namely the obligation to maintain secrecy under Regulation 33, As already observed that when a document produced, at the material time, writ petitioner was not legally authorised to procure it but after issuance of the show cause notice, the petitioner got that document officially under the said Right to Information Act. The charge memo has been framed on considering the cause of action arose on the material time when the document was procured by the delinquent writ petitioner and submitted before the appellate Authority being a document containing signatures of the Bank officers and admittedly without permission which has been practically accepted in the reply. Hence the heart and soul of the allegation of charge sheet on the point whether delinquent writ petitioner got prior permission to procure the document or not and thereby whether there is a breach of Regulation 33 and 47(1) as discussed earlier at the material time when delinquent submitted it.

20. We are afraid to discuss the issue on merit by considering the affidavit evidence as the same would be nothing but pre-trial of a trial in the sense as applied in the Bhajan Lal (supra). It is a settled legal proposition of law that in a departmental proceeding when a show-cause or a charge sheet is under challenge, ordinarily no writ application is maintainable on the logic that at that stage it is premature to identify the issue. It has been held by the Apex Court that a mere show cause or charge-sheet does not give rise any cause of action because it does not amount to any adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction to do so. It has been further observed by the Apex Court that it is quite possible that on considering the reply or after holding an enquiry, the authority concerned may drop the proceeding and/or may hold that the charges are not established. It is also settled legal position-that a writ is maintainable when some right of any party is infringed and mere issuance of show cause notice or a charge-sheet does not infringe the right of any one. That situation would arise when any final order would be passed imposing any punishment or any adverse comment would be noted affecting the delinquent's service career. Reliance is placed to the judgment passed in the case United Bank of India and Anr. v. Kunishley Satyanarayan, reported in 2006(12) SCC 28.

21. It is also a settled legal proposition of law that judicial review assailing charge-sheet of a departmental proceeding is permissible only on certain limited grounds namely mala fide and/or jurisdictional point but judicial review cannot be a tool to prejudge a issue before adjudication of the same by the Disciplinary Authority. Reliance is placed to the judgment passed in the case State of U.P. v. Ajit Singh, reported in 1997 (11) SCC 368, Union of India (UOI) and Others Vs. Upendra Singh, wherein in paragraph 6, the Apex Court opined to this effect, which read such:

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 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.

22. In the case Dy. Inspector General of Police Vs. K.S. Swaminathan, in paragraph 4 the Apex Court held also to the effect.

23. Having regard to the aforesaid judgments of Apex Court and the legal position as settled on parameters of judicial review, we are of the view that at this stage there is no scope to have judicial review of charge sheet/charge memo of the departmental proceeding challenged in the writ application. Writ application has been filed with a misconceived idea inviting Court to prejudge an issue before final decision by the disciplinary authority which on coining the language from P.P. Sharma (supra) would be nothing but a pre-trial before trial, by considering affidavit evidence.

24. The learned trial Judge in our view was correct to dismiss the writ application and we are not finding any merit in this appeal. Appeal accordingly stands dismissed with the cost of Rs. 5,000/- payable to the respondent Reserve Bank of India and all interim orders earlier passed stand vacated.

Sadhan Kumar Gupta, J.

25. I agree.