

(2016) 08 GAU CK 0074
In the Gauhati High Court
Case No : Writ Petition (C) No. 6717 of 2015

Rabindra Nath Barman

APPELLANT

Vs

Gauhati High Court

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 703 : (2016) 4 GauLT 793

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. P.K. Tiwari, Senior Advocate, for the Petitioner; Mr. S.K. Medhi, SC, Gauhati High Court, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Arup Kumar Goswami, J.— Heard Mr. P. K. Tiwari, learned Senior counsel, appearing for the petitioner. Also heard Mr. S.K. Medhi, learned Standing counsel, Gauhati High Court, appearing for the respondents.

2. This writ petition is filed praying for a writ of certiorari for quashing and setting aside the Show Cause notice dated 13.07.2015 (Annexure-5), issued by the Registrar (Administration) of the Gauhati High Court directing the petitioner, who is a Deputy Registrar of the Gauhati High Court (Itanagar Permanent Bench), to show cause, under Rule 23 of the Gauhati High Court Services (Appointment, Condition of Service and Conduct) Rules, 1967 (for short, "the Rules"), read with Article 311 of the Constitution of India, as to why any of the penalties prescribed under Rule 22 of the aforesaid Rules should not be inflicted on him on the 5 (five) number of charges brought against him.

3. A preliminary affidavit for and on behalf of respondent Nos. 1 and 2, i.e., Gauhati High Court, through the Registrar General, and the Registrar (Administration), respectively, was filed on 03.05.2016 questioning the maintainability of the writ petition. Rejoinder affidavit was also filed by the

petitioner against the preliminary affidavit of the respondent Nos. 1 and 2. Learned counsel for the parties had submitted that maintainability issue has to be decided and resolved at the first instance and, accordingly, addressed the Court on the issue of maintainability of the writ petition and, after hearing the arguments, the order on the issue of maintainability of the writ petition was reserved.

4. In the writ petition, it is pleaded that the petitioner had come to learn that in the Full Court Meeting held on 24.06.2015, no final decision was taken with regard to the petitioner, but, subsequently, a resolution was shown to have been adopted by the Full Court to issue a Show Cause notice to the petitioner with regard to the subject-matter of the charge-sheet and the respondent No. 2, in violation of the resolution adopted in the Full Court meeting, instead of issuing a Show Cause notice to the petitioner, had issued the charge-sheet.

5. Mr. Tiwari had made a request to allow him to peruse the records including the proceedings of the Full Court meeting and, and in view of the prayer made by him, by an order dated 26.11.2015, he was allowed to peruse the records and take note of the Additional Item of the agenda of the Full Court meeting held on 24.06.2015 and the resolution taken thereon as contained in pages 6, 7 and 8 of the minutes of the Full Court meeting. It is stated at the Bar that the order dated 26.11.2015 was complied with and Mr. Tiwari had inspected the documents as noted in the said order dated 26.11.2015 and had taken notes as required by him. In the course of the hearing on the point of maintainability of the writ petition, Mr. Tiwari did not address on the point raised in the writ petition that in violation of the resolution of the Full Court adopted on 24.06.2015, charge-sheet was issued to the petitioner by the respondent No. 2 as the Full Court had resolved to initiate departmental proceeding against the petitioner.

6. While the petitioner was posted as a Deputy Registrar in the Principal Seat of the Gauhati High Court, the Registrar General of the Gauhati High Court had issued an advertisement for recruitment of 59 numbers of Lower Division Assistants. About 2300 applications were received and written test was held on 04.07.2004. Viva Voce was held on 11th, 12th, 18th, 19th and 25th September, 2004, and final result of the recruitment process was announced on 02.12.2004. It is pleaded in the writ petition that there were talks amongst the successful candidates of having been approached, after the viva voce and prior to declaration of the result, with offers of job in exchange of money and, receiving such information, the Registrar (I&E), Gauhati High Court, directed the Deputy Registrar (I&E) to conduct an enquiry and, accordingly, a report dated 04.01.2005 was submitted by the Deputy Registrar (I&E) mentioning involvement of the own brother of the petitioner and one Bhusan Kalita, both of whom were working in the establishment of District and Sessions Judge, Kamrup, and the report was converted into a writ petition. By an order dated 10.01.2005, this Court directed the Central Bureau of Investigation (CBI) to register a case, investigate the matter and submit report within a period of four months.

7. Accordingly, an FIR was registered and investigation commenced and, finally, report was submitted by the Deputy Superintendent of Police, ACB, Guwahati, on 29.11.2005. In the said report, recommendation was made that the brother of the petitioner, namely, Dhiraj Barman, and Bhusan Kalita, be sent up for trial to face the charges under Section 120-B IPC read with Section 7 of the Prevention of Corruption Act, 1988 (for short, "the PC Act"). Recommendation was also made for regular departmental action for major penalty to be initiated against the present petitioner and one Mukul Bhattacharjee. It was also recommended that the name of the accused No. 3, namely, Upen Sarma, a private person, be dropped from the FIR and that he be treated as one of the witnesses. By a judgement and order dated 29.09.2009 in Special Case No. 14/2005, the learned Special Judge, CBI, Assam, Guwahati, convicted Dhiraj Barman under Sections 7 and 15 of the PC Act, read with Section 120-B IPC and, accordingly, he was sentenced. It is to be noted that Bhusan Kalita, who had turned an approver, was pardoned by an order dated 24.03.2006. An appeal was preferred by Dhiraj Barman before this Court, being CrI. Appeal No. 181/2009, and the same was dismissed by this Court on 03.01.2014.

8. Mr. S.K. Medhi, learned Standing counsel, Gauhati High Court, relying on the preliminary affidavit filed, has submitted that the CBI in its final report dated 29.11.2005 had recommended initiation of departmental proceeding for major penalty against the petitioner and Sri Mukul Bhattacharjee. In absence of any direction to initiate departmental proceeding against any of the officers, the Registry did not take any further steps and the matter remained at that stage until the petitioner submitted a representation for recalling his transfer order, dated 20.08.2013, transferring him from the Principal Seat to Itanagar Bench of the Gauhati High Court and at the time of consideration of the representation only, the matter was placed before the Hon'ble Chief Justice. It was then departmental proceeding was directed to be initiated against the petitioner and, consequent upon the resolution of the Full Court, taken on 24.06.2015, charge-sheet was issued to the petitioner. Mr. Medhi submits that issuance of charge-sheet does not give rise to a cause of action, and therefore, no legal or fundamental right of the petitioner having been violated, the writ petition is not maintainable. Though in the writ petition, the petitioner has questioned the initiation of the departmental proceeding on the ground of delay, in the written statement filed the petitioner had not taken any such plea and, that apart, in the Rules, there is no limitation for drawing up of a departmental proceeding. He further contends that in the facts and circumstances of the case, delay in initiating departmental proceeding also cannot afford a ground for maintainability of the writ petition. The petitioner having submitted his written statement to the charge-sheet, he is, even otherwise, disentitled to invoke writ jurisdiction under Article 226 of the Constitution of India to challenge the charge-sheet and, therefore, the writ petition is not maintainable and is liable to be dismissed. In substance, he submits that though in exceptional circumstances, a writ petition may be maintained under Article 226 of the Constitution against a charge-sheet

drawn in a departmental proceeding, the present is not a case of that nature. He has submitted that the question of lack of jurisdiction or competency to initiate a departmental proceeding, as pleaded in the writ petition, on the ground that the Full Court had not taken any resolution to initiate departmental proceeding against the petitioner, is no longer an issue as the learned Senior counsel appearing for the petitioner, on perusal of the records produced, was satisfied that the Full Court in its meeting held on 21.06.2015 had resolved to initiate departmental proceeding against the petitioner. Mr. Medhi further submits that the charges in question are serious in nature pertaining to wrong doing in a recruitment process. The ground of bias, urged in the writ petition, is entirely misplaced as there is no material on record to demonstrate that there is a pre-meditated motive to punish him. In support of his submissions, Mr. Medhi has placed reliance in the case of *State of Punjab v. V.K. Khanna*, reported in (2001) 2 SCC 330, *Union of India v. Ashok Kacker*, reported in (1995) Supp 1 SCC 180 and a judgement of the Delhi High Court, in *W.P. (C) No 943/2015 (Subha Kumar Dash v. The University of Delhi and Others)*, decided on 30.01.2015.

9. Mr. P.K. Tiwari, learned Senior counsel, responding to the submissions of Mr. Medhi, has submitted that delay in initiation of departmental proceeding and issuing the charge-sheet in itself is violative of Article 14 of the Constitution of India and, therefore, on the ground of violation of Article 14, the writ petitioner can maintain this application under Article 226 of the Constitution of India. He has countered the submission of Mr. Medhi by contending that the entire theme of the written statement portrays that there had been inordinate delay in issuing the charge-sheet and, therefore, the argument of Mr. Medhi that the petitioner had not raised the point of delay in his written statement is entirely fallacious. That apart, the charge-sheet having been issued on the basis of speculation and on presumption, the same can be subjected to scrutiny at the initial stage, before conclusion of the departmental proceeding. He has pointed out that in the recommendation made by the CBI, there is no suggestion of any conspiracy and, therefore, merely because the brother of the petitioner was convicted of the offence under Sections 7 and 15 of the PC Act, read with Section 120-B IPC, charge-sheet cannot be drawn against the petitioner on the presumption that he may also be involved. As charge-sheet had been issued on non-existent grounds, it has militated against the principles of Article 14 of the Constitution of India and, therefore, the writ petition is maintainable under Article 226 of the Constitution of India on that count also. He contends that by submitting the written statement the petitioner had not waived his right to approach this Court under Article 226 of the Constitution and, on the contrary, it is the settled position of law that an employee, against whom a charge-sheet had been issued, can approach the Court only after submission of written statement. It is submitted by him that no departmental proceeding had been initiated against Mukul Bhattacharjee though the CBI had recommended disciplinary proceeding to be drawn against both the petitioner and Mukul Bhattacharjee and the aforesaid fact also demonstrates that the authorities had taken a partisan view of

the matter and element of bias is embedded in issuance of the charge-sheet itself as he alone is singled out. Mr. Tiwari has submitted with regard to Charge No. 5 that this Court, in the judgement and order dated 03.01.2014, in CrI. Appeal No. 181/2009, had recorded that the result of the written test was in possession of the petitioner and not the record of selection as reflected in the charge-sheet and, therefore, the very foundation of the charge is fallacious. It is also contended by him that the petitioner was never in possession of the result of the written test. It is his submission that the petitioner not being a party to the criminal appeal, such observation cannot be used against him. It is contended by him that perusal of the charges framed against the petitioner, more particularly, Charge No. 5, would demonstrate that conclusion of misconduct against the petitioner has already been drawn and that the departmental proceeding is an empty formality. Mr. Tiwari has submitted that the plea taken that the writ petition is not maintainable has no legs to stand and the writ petition ought to be adjudicated on merits. In support of his submissions, Mr. Tiwari has placed reliance on the following judgements: *Union of India v. Ashok Kacker*, reported in (1995) (Supp) 1 SCC 180, *State of M.P. v. Bani Singh*, reported in (1990) Supp SCC 738, *P.V. Mahadevan v. M.D., Tamilnadu Housing Board*, reported in (2005) 6 SCC 636, *Secretary, Ministry of Defence v. Prabhash Ch. Mirdha*, reported in (2012) 11 SCC 565, *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*, reported in (2011) 1 SCC 182, *State of Punjab v. V. K. Khanna*, reported in (2001) 2 SCC 330, *Dy. Inspector General of Police v. K.S. Swaminathan*, reported in (1996) 11 SCC 498, *Zunjarrao Bhikaji Nagarkar v. Union of India and Ors.*, reported in (1999) 7 SCC 409, and *R.C. Sood v. High Court of Rajasthan*, reported in (1994) Supp (3) SCC 711.

10. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. I do not find any merit in the contention of Mr. Medhi that the petitioner is not entitled to invoke writ jurisdiction as he had submitted his written statement to the charge-sheet. The question of appointment of the Enquiry Officer comes only when the authority is not satisfied with the explanation furnished in the written statement to the charge-sheet. It is always proper that an employee proceeded against raises in the written statement all points available to him and invite the decision of the disciplinary authority thereon. The Enquiry Officer having been appointed, it has to be construed that the disciplinary authority did not find favour with the points urged in the written statement. Therefore, the present petition, instituted after the appointment of Enquiry Officer, cannot be held to be not maintainable on the ground that he had submitted to the jurisdiction of the disciplinary authority by submitting written statement. Whether the petitioner can maintain the writ petition on the touchstone of the principles laid down by the Apex Court is another question.

12. In *Ashok Kacker (supra)*, without submitting written statement to the charge-sheet, application was filed before the Tribunal raising various grounds and the

Tribunal had quashed the charge-sheet. The Apex Court, in the aforesaid fact situation, had held that the Tribunal had entertained the application for quashing the charge-sheet at a premature stage and, rather, it was appropriate for the applicant to have filed reply to the charge-sheet and invite decision of the disciplinary authority thereon.

13. In substance, the argument of Mr. Tiwari is that the writ petition is maintainable as the challenge is mounted on the grounds of inordinate delay in initiating departmental proceeding, biasness and pre-judgement of guilt and the charges being formulated on the basis of suspicion and speculation.

14. In *Prakash Chandra Mirdha* (supra), the Apex Court had laid down that 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 and that charge-sheet does not infringe the right of any party. It is only when a final order imposing punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action and, therefore, a charge-sheet or show cause notice in a disciplinary proceeding should not ordinarily be quashed by the Court. Normally, a charge-sheet is not quashed prior to the conducting of enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. Proceedings are not liable to be quashed on the grounds that proceedings have been initiated at a belated stage or could not be concluded in 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. Unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if delay is satisfactorily explained, then the proceedings should be permitted to continue.

15. In *Bani Singh* (supra), the Apex Court observed that in case a charge-sheet is challenged before a Court/Tribunal on the ground of delay in initiation of disciplinary proceeding, or delay in concluding the proceeding, the Court/Tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts appearing for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstances. In the aforesaid case, the irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It was not the case of the department that they were not aware of the said irregularities, if any, and that they came to know of it only in 1987. According to the department, even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. In that context, the Apex Court held that it is unreasonable

to think that the department would have taken more than 12 years to initiate the disciplinary proceedings and, accordingly, there being no satisfactory explanation for the inordinate delay in issuing the charge memo considered it to be unfair to permit the departmental enquiry to proceed with the enquiry at that stage.

16. In *P.V. Mahadevan (supra)*, the basic facts were as follows: Charge Memo was issued in the year 2000 against the appellant who was working as Superintending Engineer in the Tamilnadu Housing Board for irregularity in issuing a sale deed in 1990. Though the records were very much available with the respondent Board, no action was taken for about 10 years. Though explanation was put forward by the Board for the inordinate delay in initiating departmental proceeding stating that the irregularities came to light in the audit report for the second-half of 1994-1995, the Apex Court did not find the explanation to be convincing and the same was construed to be an after-thought. In the above circumstances, the Apex Court was of the opinion that allowing the respondent Board to proceed further with the departmental proceeding at that distance of time would be prejudicial to the appellant.

17. In *State of A.P. v. N. Radhakishan*, reported in (1998) 4 SCC 154, the Apex Court had observed that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding a disciplinary proceeding. Whether or not the disciplinary proceedings are to be terminated on the ground of delay has to be examined on the facts and circumstances of the case and the Court has to take into consideration all relevant factors, balance and weigh them and then to determine if it is in the interest of "clean and honest administration" that the disciplinary proceedings should be allowed to be maintained when there is considerable delay with no explanation for such delay.

18. When I turn to the facts of the case in the context of argument advanced on the ground of delay, I find that in the year 2005 itself, the CBI, while submitting final report, which ultimately culminated in conviction of the brother of the petitioner, had recommended drawal of departmental proceeding for major penalty against the petitioner and another. Inexplicably, it appears that the Registry did not place the matter before the competent authority as a consequence of which the competent authority had no occasion to deal with the matter. It does not appear to be a case where the disciplinary authority, in spite of the facts being brought to the notice, did not take steps for drawal of departmental proceeding. On the contrary, immediate steps were taken by Hon"ble the Chief Justice when the recommendation of the CBI came to his knowledge, by directing a preliminary enquiry to be conducted and after submission of report of the preliminary enquiry direction was issued to draw up departmental proceeding which was endorsed by the Full Court. In the facts of this case, I am of the considered opinion that on the ground of delay in drawal of departmental proceeding, viewed in the context of the charges levelled, the departmental proceeding cannot be quashed at the threshold. The plea that the

delay in initiating departmental proceeding has resulted in violation of Article 14 of the Constitution of India thereby giving rise to a cause of action for filing the writ petition, on the factual matrix of this case, is not found to be acceptable. However, this Court must put on record that Mr. Tiwari is right in submitting that the ground of delay, in essence, was projected in the written statement.

19. In *V.K. Khanna (supra)*, the Apex Court observed that 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, yet 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 concerned authority is so biased that the enquiry would be a mere farcical show and the conclusions are well known, then in that event law courts will be 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, 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. In the context of mala fide intent or biased attitude, it was observed that the same cannot be put on a straight-jacket formula but would depend upon facts and circumstances of each case.

20. In *Kumaon Mandal (supra)*, in the context of "bias" and "malice", the Apex Court observed that the word "bias" in common English parlance means and implies pre-disposition or prejudice and that the word "bias" stands included within the attributes and broader purview of the word "malice", which means and implies "spite" or "ill will". It was also observed that mere general statements will not be sufficient for the purpose of indication of "ill will". The conclusion as to whether there is real danger of bias has to be based on surrounding circumstances.

21. In *K.S. Swaminathan (supra)*, the Apex Court held that at the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Apex Court, in the facts of the case, held that the Tribunal was totally unjustified in going into the charges at that stage as it was not the case that the charge memo and the statement of facts did not disclose any misconduct alleged against the delinquent officer. It was also held that the Tribunal was totally wrong in quashing the charge memo as that was not the stage at which the truth or otherwise of the charges ought to be looked into.

22. In *Zunjarrao Bhikaji Nagarkar (supra)*, the Apex Court held that initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter and there must be reasonable basis for the disciplinary authority to proceed against the delinquent officer. The same was a case relating to an officer exercising quasi-

judicial authority. The Apex Court held that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers and, therefore, to maintain any charge-sheet against a quasi-judicial authority something more had to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since in sum and substance misconduct was sought to be inferred that the appellant had committed an error of law, the Apex Court held that the charge-sheet on the face of it did not proceed on any legal premise and, therefore, quashed the same.

23. In *R.C. Sood* (supra), the High Court had taken the view that the mistake in the date of mentioning "1st January, 1995" instead of "1st January, 1994" in the advertisement was the result of an interpolation or change in the date made by the petitioner and that it amounted to gross misconduct in view of the consequence flowing there from which enabled some undue benefit to some candidates. The Apex Court held that there was no material in the entire record, apart from the fact that the petitioner happened to be posted as Registrar of the High Court at the time when the draft advertisement was finalised and sent for publication in the Gazette, to suggest that the change in the year from "1994" in the original draft to "1995" had been made by the petitioner and none else as there was opportunity for making the change of the kind visualised by the High Court to many others in the Registry. As the departmental proceeding was initiated on the erroneous assumption that the change must have been made only by the petitioner and, that too, for an ulterior purpose, without any material to justify that assumption, the Apex Court had held that the action taken against the petitioner was arbitrary, unwarranted and violative of Articles 14 and 16 of the Constitution.

24. In *Subhas Kumar Dash* (supra), the Delhi High Court had observed that a Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of res judicata or double jeopardy or that on the face of the show cause notice even if facts are accepted as correct, no charges are made out.

25. While it is correct that when the CBI had recommended disciplinary proceeding to be initiated against the petitioner and Mukul Bhattacharjee, disciplinary proceeding stands initiated as on date only against the petitioner. In the preliminary affidavit filed, it is stated that there is no decision not to draw up disciplinary proceeding against Mukul Bhattacharjee. At this juncture, it will be hazardous to draw a conclusion that the petitioner has been singled out. The fact that disciplinary proceeding has been initiated against the petitioner only will not give rise to bias or malice on the part of the disciplinary authority or that the petitioner has been meted out discriminatory treatment. The pleading of the petitioner that Division Bench of this Court having set aside the penalty of

reversion imposed on the petitioner in a disciplinary proceeding from the post of Deputy Registrar to the junior-most Assistant Registrar, actuated by malice, prompted and activated the disciplinary authority to again initiate a disciplinary proceeding against the petitioner is difficult to accept. Penalty of reversion was set aside on 02.03.2012 and the charge-sheet was issued long 3? years thereafter. How this charge-sheet came to be issued has already been discussed in a preceding paragraph.

26. It is to be noted that the writ petition was also structured on the basis that in violation of the resolution adopted by the Full Court, instead of issuing a Show-Cause notice simpliciter to the petitioner, charge-sheet, which is not one and the same thing as a Show-Cause notice, was issued to the petitioner. As noted earlier, this point is not canvassed by Mr. Tiwari, and for good reason.

27. Charges No. 1, 2 and 3, in short, are to the effect that while the petitioner was posted as Deputy Registrar (Administration) in September, 2004, he was associated with the recruitment process for Lower Division Assistant in the Gauhati High Court and, by virtue of this engagement, he had access to the select list and the particulars of the selected candidates like their names, mobile numbers, addresses, etc. Approaches were made to many of the selected candidates for their appointment in lieu of illegal gratification by the brother of the petitioner or by persons acting on his behalf. The petitioner is alleged to have facilitated his brother to make contact with already selected candidates for the purpose of securing appointment in lieu of illegal gratification by leaking out and making available the particulars of the selected candidates. Accordingly, he was charged with gross indiscipline, dishonesty, misuse of official position, lowering the reputation and decorum of the High Court, etc.

28. As it appears, basic foundation of the aforesaid charges is that the petitioner had access to the select list and particulars of the selected candidates and had leaked out the same to his brother. So far as Charge No. 4 is concerned, the emphasis is on failure of the petitioner to bring to the notice of the authorities about the approaches made by his brother to selected candidates with promise to secure appointments despite the fact that he had full knowledge of such approaches. This Court will not venture to record a finding as to whether the petitioner had access to the select list and particulars of the selected candidates or as to whether it was the petitioner who had leaked out the information of the candidates to his brother or as to whether the petitioner, despite knowledge of his brother making approaches to selected candidates to secure appointments for illegal gratification, did not inform the authorities and, thus, was a willing participant. It will be entirely for the authority to establish the same in the disciplinary proceeding. In Kumaon Mandal (*supra*), in the charge-sheet itself it having been recorded that the employee proceeded against never kept in mind the interest of the Nigam due to his personal vested interests and due to his corrupt conduct he had no control over his subordinates, the Apex Court observed that the same does indicate a state of mind reflecting bias. Present one

is not a case of this nature. Malice and bias having not been established, it will not be permissible for this Court to delve deep into the charges. All that is required to be seen, at this juncture, is whether statement of facts discloses alleged misconduct. Truth or otherwise of the charges or whether disciplinary authority can establish the facts based on which the charges are framed cannot be gone into at this stage, because it is the function of the disciplinary authority to determine the correctness or truthfulness of the charge. If the facts stated are accepted as correct, charges are made out. It cannot be said at this stage that the charges are speculative in nature.

29. With regard to submission of Mr. Tiwari in connection with Charge No. 5, suffice is to say that record of selection process will include result of written test and, to that extent no exception can be taken to that expression. However, it has to be understood that the same is referable to result of the written test only. Needless to say, whether the petitioner was in possession of the result of the written test is again a matter which has to be established in the departmental proceeding in accordance with law.

30. In view of the above discussions, I am of the considered opinion that the petitioner has failed to establish limited grounds on which he can maintain the writ application under Article 226 of the Constitution of India at the stage of issuance of charge-sheet, which, otherwise, by itself, does not constitute a cause of action. Taking that view, in the facts and circumstances of the case, the issue of maintainability of the writ petition is decided against the petitioner. Once the writ petition is held to be not maintainable, necessarily, the writ petition has to be dismissed. Accordingly, the writ petition is dismissed as not maintainable at this stage. Interim order stands vacated. No cost.