

(2011) 07 DEL CK 0107

In the Delhi High Court

Case No : Writ Petition (C) 8779 of 2008 and CM 1167 of 2011

Rajesh Kumar Gouhari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Discipline and Appeal Rules, 2003 — Rule 4(1), 5, 5(20), 5(6), 5(7)

Citation : (2011) 9 AD 420 : (2011) 185 DLT 226 : (2012) 2 SLJ 108

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : C.N. Sreekumar, for the Appellant; A.S. Singh, for Respondent No. 1, Shobha and Mohinder P. Thakur for Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of this petition under Article 226 and 227 of the Constitution of India, Petitioner has prayed for issuance of a writ in the nature of certiorari to quash memorandum No. 11(181)/96-D&AR-II dated 19th August, 2008 and the departmental proceedings arising out of the same. The Petitioner has also prayed for grant of appropriate compensation to him from the Respondents for causing the alleged harassment and mental agony to him.

2. Briefly the facts relevant for disposal of the present writ petition are as under:

Petitioner was appointed as Assistant Manager (Internal Audit) with Respondent No. 2 on 12.05.1996 and has been working there since then. It is alleged that Petitioner had raised certain issues about the wrong doings of some of the higher-ups of Respondent No. 2 due to which he was transferred to Bangalore on 18th February, 2005. The Petitioner had challenged the said transfer order by filing a writ petition before this Court i.e. WP (C) 8516/2005. Some interim orders were passed in the said petition. Ultimately the same was dismissed on 15th December, 2006. Thereafter, on 3rd January, 2007, Respondent No. 2 issued an order asking him to join the duty at Bangalore before 15.1.2007. In the

meantime, Petitioner had also filed a Letters Patent Appeal i.e. LPA No. 13/2007 against the order dated 15th December, 2006. During the pendency of said LPA, another order was issued on 15th January, 2007 by the Respondents asking him to join duty at Bangalore initially for a period of three months. Petitioner had also filed contempt petition being CCP No. 483/2006 against Respondent No. 3 during the pendency of writ petition for failure to comply with the interim order dated 18th May, 2005 wherein notice was issued to Respondent No. 3.

On 5th October, 2007, Respondents had issued a charge sheet to the Petitioner which has been challenged by him by filing a WP(C) 4153/2008 wherein this Court has passed an interim order directing the Respondents not to pass final order in the said departmental inquiry. The said petition is pending disposal before this Court. On 19.08.2008, another memorandum/charge sheet was issued to the Petitioner which is challenged by filing the present writ petition. It is alleged that the memorandum/charge-sheet dated 19th August, 2008 has been issued because the Petitioner had filed a contempt petition i.e. CCP 483/2006 against Respondent No. 3 and had challenged transfer order by filing WP(C) No. 8516/2005 against Respondents. It is alleged that memorandum dated 19th August, 2008 does not constitute alleged misconduct within the meaning of Rule 5 of the Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003. It is further alleged that the said charge sheet is time barred as the alleged misconduct took place during the year 2005-2007 and under the rules, disciplinary proceedings ought to have been initiated within three months and as the charge sheet is issued at a belated stage, the same is liable to be quashed. It is further alleged that the impugned charge sheet issued is also violative of Rule 25 of Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003 as no show cause notice was issued to the Petitioner before commencing the inquiry. It is further alleged that when the earlier memorandum/charge-sheet dated 5th October, 2007 was issued, all the facts and circumstances and alleged grounds of the present departmental enquiry were before Respondent No. 3 and no enquiry was ordered at that time against these charges. The very purpose of issuing the present memorandum after one year of issuance of earlier charge-sheet dated 05.10.2007 is only to harass the Petitioner and to take vengeance against him who has instituted contempt petition against Respondent No. 3 and has also challenged the earlier memorandum dated 5th October, 2007. Petitioner has accordingly prayed that memorandum no 11(181)/96-D&AR-II dated 19th August, 2008 and the departmental proceedings arising therefrom against him may be quashed.

3. Respondents 2 to 4 have opposed the present writ petition by filing a counter affidavit wherein it is stated that Petitioner has already filed a reply to the memorandum dated 19th September, 2008. It is alleged that after considering his reply, the Competent Authority of Respondent No. 2 has appointed an independent inquiring authority to inquire into the charges levelled against the Petitioner as admissible under Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003. It is further stated that the writ petition against a memorandum of charge

sheet is not maintainable and is liable to be dismissed as "premature". It is alleged that Petitioner was earlier also found guilty of not working in the interest of the Respondent organization and after conducting a preliminary inquiry was transferred to a non-sensitive post at Bangalore. The Petitioner had challenged the order of transfer by filing a writ petition which has been dismissed on 15th February, 2006. It is alleged that the Petitioner has been making representation after representations to the Respondent organization as well as various other authorities including the President of India, Office of Prime Minister, NHRC, various other Ministers and has been sending applications under Right to Information Act, 2005. It is alleged that in the said representations Petitioner has made false allegations against various authorities of the Respondent department. It is alleged that conduct of Petitioner is highly condemnable and has badly affected the reputation of Respondent organization before various authorities.

Respondents have categorically denied that memorandum dated 19.08.2008 is illegal, time barred, arbitrary or malafide, as is alleged by the Petitioner. It is denied that the Petitioner was transferred to Bangalore due to malafide approach of Respondents as is alleged. Respondents have denied that the basis of the memorandum dated 19.08.2008 are the contempt petition or filing of earlier writ petitions by the Petitioner, as is alleged. The allegations of malafide are specifically denied by the Respondents. It is alleged that the Petitioner has failed to explain as to how and why Respondent No. 3 has any malafide against him. It is alleged that the conduct of the Petitioner referred to in the impugned charge-sheet in question amounts to serious misconduct as defined under Rule 5 of the Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003. It is further alleged that Petitioner has wrongly placed reliance upon the Vigilance Manual as Petitioner is governed by Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003 as per which there is no time limit prescribed to issue the charge sheet and to conduct the inquiry thereafter. Respondents have denied that there is violation of Rule 25 of Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003, 2003, as is alleged. It is alleged that the said rule nowhere suggests that the Disciplinary Authority has to record its satisfaction before any departmental action is initiated against any employee.

4. By order dated 14th January, 2010 of this Court, Petitioner was allowed to place on record additional documents i.e correspondence between the Respondents and the CVC relating to the transfer and departmental proceedings against the Petitioner. Vide the same order, liberty was granted to Respondents 2 to 4 to place on record additional documents i.e communications sent by Respondents 2 to 4 to the CVC in response to their communication concerning the Petitioner. Accordingly, Respondents 2 to 4 have also filed the additional documents to rebut the stand of the Petitioner taken vide additional documents.

5. I have heard counsel for parties and perused material on record.

6. Learned Counsel for the Petitioner has contended that the impugned memorandum of charge sheet dated 19th August, 2008 is in violation of

principles of natural justice as no show cause notice was issued before initiation of inquiry whereas the said notice was required to be issued as per Rule 25 of Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003. It is contended that there is malafide on the part of Respondent No. 3 in issuing the aforesaid charge sheet inasmuch as Petitioner had earlier filed a petition being WP(C) 8516/2005 challenging his transfer order to Bangalore and had also filed a contempt petition being CCP No. 483/2006 and had also challenged the earlier charge sheet dated 5th October, 2007. It is further contended that allegations made in the charge sheet does not constitute misconduct as defined in Rule 5 of the aforesaid Rules. Further contention of the Petitioner is that alleged misconduct took place in the years 2005-2007 and under the rules, the same ought to have been initiated within three months whereas in the present case, inquiry initiated is belated and is therefore liable to be dismissed. In support of the above contention, learned Counsel has relied upon the CVC Instructions giving time limit for departmental inquiry. It is contended that time limit of three months given in the aforesaid instructions/guidelines whereas there is much delay in initiation of inquiry and there is no explanation for the same, as such the enquiry is time barred. It is further contended that charge sheet cannot be issued on piecemeal basis. Earlier the charge sheet was issued on 5th October, 2007. The allegations levelled in the present charge sheet were already known to Respondents and there is no justification for issuing the present charge sheet.

Relying on additional documents placed on record i.e letters dated 8th October, 2009, 19th November, 2009 etc issued by CVC to Respondents, it is contended that there is observation of CVC that Respondents 2 to 4 are harassing a whistle blower, as such enquiry is liable to be vitiated. The CVC has also written to Respondents 2 to 4 to transfer the Petitioner back to Noida.

7. Learned Counsel for Respondents 2 to 4 has contended that present petition is not maintainable and the same is premature as the Petitioner at this stage cannot have any grievance as mere charge sheet does not give rise to any cause of action because the same does not amount to adverse orders which affects the rights of any party and the present petition is liable to be thrown out on this ground itself. It is further submitted that Petitioner has already replied to the charge sheet and after considering the same, inquiry has been initiated against him and the same is now complete. However, no further action could be taken because of orders dated 21st June, 2009 of this Court. It is contended that in order to delay the proceedings, he has filed the present petition. Learned Counsel has contended that nothing has been placed on record to substantiate the allegations of malafide. Learned Counsel has submitted that there is no violation of Rule 25 of Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003 as the said rule nowhere suggests that the Disciplinary Authority has to record its satisfaction before any departmental action is initiated against any employee. It is contended that observation of CVC as referred to in documents filed by Petitioner are advisory in nature and same has nothing to do with the departmental proceedings. Further the transfer issue of Petitioner has already

been decided by this Court vide judgment dated 15th December, 2006 passed in WP(C) 8516/2005.

8. There are seven Articles of charge in the charge sheet dated 19th August, 2008. The same are reproduced as under:

ARTICLE I

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance), Ed. CIL, NIAW, Ballabgarh, while working as Assistant Manager in Institutional Development Department of Ed. CIL, Corporate office during the year 2005-06, was transferred to Bangalore Branch office, ED.CI L for closure of Bangalore Branch balance work and recovery of ED.CI Judge vice Order No. 20(9) 83-Admn. Dated 18.02.2005. Again vide Office Order No. 11(181)/96-Admn. Dated 7.6.2005, he was informed that he stood relieved from Corporate office and he should reach at Bangalore Office immediately. He was also informed that his request for leave for period from 1.6.2005 to 30.06.2005 has not been sanctioned in exigencies of service. But Shri Gouhari willfully avoided to carry out orders of his transfer and join at Bangalore for one reason or the other despite issue of repeated instructions. He did not assume charge at Bangalore during 7.6.2005 to 30.1.2006 in spite having been provided with confirmed journey ticket on 22.06.05 for 27.6.05 and also having been provided with transfer advance and issue of repeated instructions and warnings. He, thus, not only disobeyed the rightful instructions but also violated terms of service conditions accepted by him at the time of his appointment. He thereby committed grave misconduct of indisciplined behavior in disobeying rightful orders and dereliction of duty in not carrying out rightful, bonafide, lawful and valid orders and acted in a manner unbecoming of ED. CIL Executive and violated Rule 4(1) (ii), (iii), 5(6), 5(7), 5(9) & 5(20) of Ed. CIL Conduct, Discipline and Appeal Rule, 2003.

ARTICLE II

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance), Ed. CIL, NIAW, Ballabgarh while working as Assistant Manager in ID Department of Ed. CIL, Corporate Office, during 2005-06 and transferred to Bangalore Branch Office. His request for leave from 1.6.2005 to 30.6.2005 which was not acceded due to exigencies of services and he was advised vide office order No. 11(181)/96-Admn., dated 7.6.2005 that he should reach Bangalore office immediately failing which action as deemed fit shall be initiated against him as per rules of the Corporation. He willfully did not join at Bangalore and remained on unauthorized absence from duty from 1.6.2005 to 30.6.2005, he thereby committed misconduct and showed indisciplined behavior, non devotion to duty and contravened Rule 4 1 (ii) (iii), 5(18) and 5(20) of Ed. CIL's Conduct, Discipline and Appeal Rules, 2003.

ARTICLE III

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance), NIAW,

Ballabgarh while working as Assistant Manager in ID Department of Ed. CIL , Corporate Office, during 2005-06 and transferred to Bangalore Branch Office, Ed. CIL , brought outside influence/pressure through various authorities/ dignitaries for cancellation of transfer orders made as per terms and conditions of his service and administrative requirement of Ed. CIL . Letters received from various constitutional, political and other authorities by misrepresenting the facts and are detailed in Annexure "A" mentioned in Imputation of misconduct. Reasons quoted in these letters for cancellation were incorrect.

Rule 17 of Ed. CIL's Conduct, Discipline and Appeal Rules provides that no employee shall bring or attempt to bring any outside influence to further his interest in respect of matters pertaining to his service in the company.

Shri Rajesh Kumar Gouhari was, therefore, advised vide letter No. 11 (181)/96-Admn. Dated 25.11.2005 to restrain himself from bringing outside pressure/ influence to further his interest in service matters. He did not restrain in getting letters written by his family members even after due advice to him. He himself also wrote to Chairman, National Human Rights Commission vide his application dated 20.04.2007 by giving false facts and sought for cancellation of transfer order. Reply in regard to his complaint dated 20.04.2007 vide letter No. 11 (181)/96-Admn. (Vol. VII) dated 7.11.2007 gives full facts of the case. It does not indicate anything which warranted outside interference in the matter of transfer especially when his case was considered by Hon''ble Court of Delhi vide judgment dated 15.12.2006. He, there by, committed grave misconduct of indiscipline in bringing outside influence to further his interest in respect of matter pertaining to his service in the company and acted in a manner unbecoming of Ed. CIL's employee and contravened Rule 4 1 (ii) (iii), 5(5) and 5(20) & 17 of Ed. CIL's Conduct, Discipline and Appeal Rules, 2003.

ARTICLE IV

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance),Ed. CIL, NIAW, Ballabgarh while working as Assistant Manager in ID Department of Ed. CIL , Corporate Office, during 2005-06 and transferred to Bangalore Branch Office, created false impression about his transfer to Bangalore Office for cancellation of the same. He quoted misleading facts in his Writ Petition and the same were considered by Hon''ble High Court of Delhi and were not found correct and accordingly dismissed his writ petition against the said transfer order. However, he still continued to quote the same incorrect facts in his various representations.

He, thus committed misconduct in as much as that by writing such false facts he tried to show vindictiveness in administrative orders of his transfer issued in the interest of Ed. CIL and lowering the image of ED. CIL in the eyes of various highest authorities to whom letters on this subject were written. Such acts are clear misconduct and are not expected from and executive of a company and thereby violated Rule 4 1(ii), 4(1) (iii), and 5(20) of Ed. CIL's Conduct, Discipline

and Appeal Rules, 2003.

ARTICLE V.

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance), Ed. CIL, NIAW, Ballabgarh while working as Assistant Manager in ID Department of Ed. CIL, Corporate Office, during 2005-06 and transferred to Bangalore Branch Office, Ed. CIL, failed to keep interest and development of the company in view and did not perform his duties as required at Bangalore. After reporting at Bangalore on 17.01.2007, he failed to devote his time and energy towards performance of his duties but instead entered into frivolous correspondence with HOD (ID) as is evident from the following:

(i) Letters dated 16.1.2007 to 23.01.2007 from Shri Rajesh Kumar Gouhari to Deputy Manager (Projects) as referred by Shri Nandeesh Babu, DM (Projects) in his note dated 20.06.2006. These letters indicated facts of non performance of Shri Rajesh Kumar Gouhari such as that he could not go through the duties he was to perform, locating office premises (letter dated 17.1.2007); sitting outside closed office helplessly, waiting for someone to open office, non opening of office, without representative from corporate office (letter dated 18.1.2007, 19.1.2007, 20.1.2007, 22.1.2007 & 23.1.2007) are indicative of his willful non performance.

(ii) He failed to submit performance report up to 21.2.2007 despite asking by ID Division. He, however, submitted first performance report on 13.06.2007 as is revealed by Shri Nandeesh Babu vide his note dated 20.6.2007. This fact was even confirmed by Shri Rajesh Kumar Gouhari in reply to Q No. 5 in his statement dated 21.6.2007.

(iii) He remained on leave from 21.2.2007 to 22.4.2007 on the ground of sickness of his mother. Thus he did not perform his duties and was counting days to return to Delhi as per his letter dated 16.4.2007. He did not perform even after advice of AM (P) vide his letter No. 11 (181)/96-Admn. Dated 2.2.2007 and 16.4.,2007 advising him to interact with ID Division and to perform the job entrusted to him failing which disciplinary action may be taken against him for insubordination and indiscipline.

He failed to perform duties sincerely and devotedly despite repeated advice and warning and thus committed misconduct of non - performing of his duties and wasting time and violated Rule 4 1 (ii), & 4(1) (iii), 5(5), 5(9), 5(18), and 5(20) of Ed. CIL's Conduct, Discipline and Appeal Rules, 2003.

ARTICLE VI

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance), NIAW, Ballabgarh, Ed. CIL, while under orders of transfer/posting and working as Assistant Manager, at Bangalore during 2005-07 was in habit of not following official rules, procedure and used discourteous and improper language in his letters/representations. He acted as per his whims and convenience. He wrote a number of letters/applications containing discourteous and improper language by

giving incorrect facts as detailed in statement of imputations. These are against official decorum and decency tantamounting to misconduct. He raised even false allegations against senior officials. He, by writing such letters showed disrespect towards Ed. CIL's management and thus tried to damage the image and reputation of ED.CIL in the eyes of higher authorities giving false facts. He even threatened to commit suicide if his illogical, unrealistic requests were not accepted. Details of such supportive facts are given in the Statement of imputation and misbehavior i.e. Annexure II. He tried to force his convenience through accusation and false representation. He thus committed misconduct and acted in a manner unbecoming of Ed. CIL's executive and violated rule 4 1(ii), & (iii), 5(5), 5(9), and 5(20) of Ed. CIL's Conduct, Discipline and Appeal Rules, 2003.

ARTICLE VII

That the said Shri Rajesh Kumar Gouhari, Assistant Manager (Finance), Ed. CIL, NIAW, Ballabgarh, while working as Assistant Manager, Bangalore Branch Office during January 2007 to September 2007 was sanctioned Imprest amount of Rs. 5,000/- for purchase of stationery and postage charges for official use at Bangalore Branch Office. He was paid Rs. 5,000/- on 29.1.2007 as per details given by Manager (Finance) in her note dated 3.4.2008. He was on leave from 21.2.2007 to 22.4.2007 and was away from Bangalore Office. He was not performing any official duty during this period of his stay at Delhi on leave. He claimed to have utilized Rs. 680/- towards postage/fax charges during the period from 23.3.2007 to 24.4.2007 when he was on leave in Delhi. Imprest amount was sanctioned to him for performance of efficient and smooth functioning of Bangalore branch office. He requested for recoupment of the imprest amount including the amount of Rs. 680/- vide his application dated 14.6.2007 of Bangalore branch office. He requested for recoupment of the imprest amount including the amount of Rs. 680/- vide his application dated 14.6.2007. It is a fact on record that while on leave in Delhi, he was not performing any official duties and was not supposed to carry and mix personal cash and imprest cash in dispatch of letters relating to his own service matters but he willfully misused, the Imprest amount for dispatch of his personal letters, fax etc. during 23.3.2007 to 20.4.2007 from Sarojini Nagar, Janak Puri and Chanakya Puri, New Delhi post Offices and claimed it as official expenses. He attempted to misappropriate Imprest cash of Rs. 680/- during the period from 23.3.2007 to 20.4.2007 and the final settlement of adjustment was done on 10.7.2007. He thereby illegally withheld unspent official imprest money with him and misutilised the said amount during his leave period in Delhi for sending letters/faxes related to his service matters and not only attempted to misappropriate imprest amount but also continued to withhold and misuse till its recoupment was finally disallowed i.e. on 10.7.2007. He intentionally used amount of the corporation on his personal amount. He misappropriated the imprest cash by misutilising for his personal use, which was actually meant for official use. He thus committed grave misconduct and violated Rule 4 1 (i), 4(1)(iii), 5(5), and 5(20) of Ed. CIL's

Conduct, Discipline and Appeal Rules, 2003.

9. The Petitioner had filed reply thereto. It has been informed that the inquiry has also been completed and final order is not yet passed because of the order of this Court dated 21.07.2009 whereby Respondents were directed not to pass final order pursuant to inquiry initiated without the leave of the court.

10. After hearing counsel for parties, I am of the opinion that it will not be appropriate to interfere with the departmental proceedings at this stage as no final decision has yet been taken by the Respondents 2 to 4.

In Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, wherein the issue was of maintainability of writ petition under Article 226 of the Constitution of India impugning show cause notice/charge-sheet, the Supreme Court has held as under:

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

In Managing Director, Madras Metropolitan Water Supply and Sewerage Board and Another Vs. R. Rajan and Others, the Supreme Court has observed as under:

As rightly held by the learned Single Judge and the Division Bench no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the Respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the Respondents. Such an exercise

is purely academic at this stage of the disciplinary proceedings.

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In Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, , wherein show cause notice was issued to Appellant therein as to why on account of finding of Enquiry Officer he be not dismissed from service. The same was challenged before High Court by filing a petition under Article 226 of the Constitution of India. The High Court dismissed the petition as premature. On challenge before the Supreme Court, the Supreme Court dismissed the appeal and held as under:

5. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the Appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these issues which merit serious consideration.

11. On reading and perusal of impugned memorandum of charge sheet dated 19th August, 2008, prima facie, it can't be said that the allegations made therein if found true will not constitute misconduct as is alleged. As regards the malafide, Petitioner has contended that impugned memorandum is issued because he had filed litigation against Respondents, the details of which are given in the preceding paragraphs. Respondents have specifically denied the allegations in this regard. Learned Counsel for Respondent has pointed out in the W.P(C) 8516/2005 challenging transfer order, Petitioner could not substantiate the allegations of malafide against Respondents and learned Single Judge has made observation in this regard in the judgment dated 15th December, 2008 in WP(C) 8516/2005. The Letters Patent Appeal against the said judgment is dismissed. Even the SLP filed by Petitioner is also dismissed. Considering the material on record, it can't be said conclusively at this stage that the impugned memo is issued on account of malafide on the part of Respondents as is alleged by Petitioner. The above observation is given as the learned Counsel for the Petitioner has strenuously argued in this regard. However, no final opinion is being expressed in view of the fact that the matter is still pending consideration before the Disciplinary Authority.

12. The other contention of the Petitioner is that the charge sheet dated 19th August, 2008 is time barred. In support of this, Petitioner has referred to CVC Instructions/Guidelines at page 106 of paper book whereas stand of Respondents 2 to 4 is that same have no statutory force. Petitioner is alleging violation of Rule 25 of Ed. CIL (Conduct, Discipline and Appeal) Rules, 2003 in initiation of inquiry whereas Respondents have denied the same. The other contentions of the Petitioner have already been discussed above. The stand of Respondents in

respect of other contentions of Petitioner has also been stated above.

13. Considering the totality of facts and circumstances of the case, I am not inclined to interfere in the midstream. It is not the case of Petitioner that the charge sheet has been issued by a person who is not authorized or is without jurisdiction. It is informed that enquiry proceedings have been completed. The Enquiry Officer has prepared its report. If the enquiry officer has submitted the report and the Disciplinary Authority is prima facie inclined to have adverse view against the Petitioner, the copy of enquiry report shall be supplied to Petitioner and an opportunity be given to him for responding to the same as per law laid down in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . It will be open to the Petitioner in that event to raise all such contentions before the Disciplinary Authority as are raised in the present petition including any other contention which may be available to him as per law. The Disciplinary Authority will look into the matter and will pass a speaking order in accordance with law. It is also informed that there is a provision of appeal against the order of Disciplinary Authority imposing a penalty under the Ed. CIL'S (Conduct, Discipline & Appeal) Rules, 2003.

14. In view of above discussion, no interference of this Court is required at this stage in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition stands dismissed. There is no order as to costs.

CM 1167/2011

In view of the above order on the main petition, no further orders are required on the present application. The same stands disposed of accordingly.