

HIGH COURT OF MADHYA PRADESH: MAIN
SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K. SETH AND
HON. SMT. ANJULI PALO, JJ)

WRIT APPEAL No.451/2017

Municipal Corporation, Jabalpur & another

Vs.

State of Madhya Pradesh & another

Shri Saurabh Sunder, Advocate for
appellants.

Shri A.P. Singh, Government Advocate
for respondent No.1/State.

Shri Vipin Yadav, Advocate for
respondent No.2.

JUDGMENT

(27.06.2017)

This intra-Court appeal is directed against the order dated 19th of April, 2017 passed by learned Single Judge in Writ Petition No.3636/2017.

2. By the order impugned, learned Single Judge has quashed the suspension order dated 15.11.2016 issued against the respondent No.2 only on the ground that

charge-sheet was issued beyond the period of 45 days.

3. It is an admitted fact that respondent No.2 was placed under suspension vide order dated 15.11.2016 passed by the Commissioner, Municipal Corporation, Jabalpur. It is also not in dispute that charge-sheet dated 30.12.2016 was dispatched on 10.01.2017 and it was received by the respondent No.2 on 11.1.2017.

4. At the relevant time, respondent No.2 was working as Chief Sanitary Inspector. For certain dereliction of duty, he was placed under suspension with immediate effect vide order dated 15.11.2016.

5. Learned counsel appearing for respondent No.2 submitted that in absence of any statutory by-laws or Regulations, the provision of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966, in the matter of suspension would be applicable to the respondent No.2. This aspect of the matter is not denied by learned counsel appearing for the appellants.

6. Learned counsel appearing for respondent No.2 argued that firstly the

charge-sheet was not signed on 30.12.2016. Secondly, it was dispatched on 10.01.2017 and, therefore, clearly being beyond the date of period prescribed under Rule 9 (2) (a) of the Rules of 1966, the suspension order has lost its efficacy.

7. This contention of learned counsel for respondent No.2 was accepted by learned Single Judge and learned Single Judge allowed the Writ Petition quashing the suspension order.

8. On 15.05.2017, the Division Bench of this Court directed the counsel for appellants to produce the Dispatch Register of 30.12.2016. In compliance of the said direction, learned counsel for the appellants has produced the Register wherein at serial No.37 dated 30.12.2016 an entry has been made to this effect:-

“श्री अनिल जैन (निलंबित), मुख्य स्वाच्छता निरीक्षक,
स्वास्थ्य विभाग, विषय – आरोप पत्र, आरोप विवरण,
अभिलेख सूची साक्ष्य सूची.”

The above order was passed to ascertain whether the charge-sheet was issued on 30th of December, 2016 or not. It is significant to note that this entry has been made in the Dispatch Register of Office of the Deputy Commissioner (A) and perusal of the suspension order shows that copy of the suspension order was endorsed

to Deputy Commissioner, Health and from this entry of the charge-sheet, petitioner has filed his defence which is available in the record of writ Court wherein same number "क्रमांक - स्वास्थ्य विभाग/16/उपायुक्त स्वास्थ्य/37 दिनांक 30.12.2016" has been mentioned.

9. Thus, we are not impressed by the contention of learned counsel for the respondent No.2 that charge-sheet was antedated. The Commissioner, Municipal Corporation has no grudge to grind against the respondent No.2 and there is no justification or reason why would he antedate the charge-sheet which was infact dispatched on 30.12.2016 as is evident from the entry in the Dispatch Register.

10. The next contention of learned counsel for respondent No.2 is that word "Issue" has a greater significance. Elaborating his submission, he submitted that mere decision to initiate departmental enquiry or mere signing of the charge-sheet is not enough unless it is issued or communicated to the person concerned. In support of this contention, he has relied on a decision reported in **AIR 1966 SC 1313 State of Punjab Vs. Amar Singh Harika** wherein their Lordships of the Supreme Court have held that mere passing of an order of dismissal would not

be effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect from the date on which order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published.

11. On the other hand, learned counsel appearing for the appellants in support of his contention submitted that if he counts 45 days from the date of suspension order i.e. 15.11.2016, the 45th day would come to an end on the mid-night of 31st of December, 2016 and, therefore, the charge-sheet was issued on the 45th day. As per the reply filed before the learned Single Judge, it was also contented by the appellants that the respondent No.2 evaded receipt of the charge-sheet as is clear from the endorsement of the charge-sheet, copy whereof has been placed on record as Annexure-R-2/1 with the reply. Learned counsel appearing for respondent No.2 seriously disputed this aspect of the matter.

12. In the case of State of M.P. Vs. L.P. Tiwari, (1994) 4 SCC 468, the Supreme Court dealt with the situation where delinquent employee evaded the service of charge-sheet to overcome the suspension order. It was in this context, it was observed by their Lordships as under :-

"The object of Rule 9 appears to be that the competent authority having placed a delinquent officer under suspension, cannot sit over the case without prompt follow-up action of conducting an inquiry into the alleged misconduct. The dereliction thereof entails the authority with denuding the power to continue the officer under suspension, though the power of enquiry subsists. That would be clear from proviso to Rule 9(2-b). It would thus be clear that where disciplinary proceedings are pending or contemplated, it is open to the appointing authority, disciplinary authority or authorised officer to keep government servant under suspension and have the articles of charges together with the particulars issued or caused to be issued to such government servant within the prescribed period. On its so issuing the order of suspension remains in force until revoked on reconsideration in terms of the rules based on facts scenario or proceedings terminated by an order on merits. It is thereby clear

that service of the article of charge is not a condition precedent. Putting it in transmission within the period is sufficient compliance."

13. Learned counsel appearing for the appellants has also relied on a decision of the Supreme Court reported in 1993 (3) SCC 196, Delhi Development Authority Vs. H.C. Khurana wherein their Lordships of the Supreme Court dealt with the point relating to issue of charge-sheet in the meaning of context in view of the new horizons given to the Article 311 by Jankiraman's case 1991 (4) SCC 109, and it was observed that "the short question for consideration is; whether in the present case the High Court has correctly applied the decision of Jankiraman ?" Learned counsel appearing for the appellants contended that *Jankiraman* cannot be read to hold in a case like the present, where the disciplinary proceedings had been initiated by framing the charge-sheet and dispatching the same, that the charge-sheet had not been issued; therefore, the 'sealed covered procedure' could not be followed by the DPC on 28th of November 1990. On the other hand, learned counsel for respondent strenuously urged that *Jankiraman* holds that without effective

service of the charge-sheet on the employee, the disciplinary proceedings cannot be said to have been initiated against him. Infact, charge sheet was issued on 45th day from the date of issuance of suspension order.

14. The question now, is; what is the stage, when it can be said that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of allegation made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved,

the penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. It was further observed in paras 11, 12, 13, 14 and 15 as under:-

"11. The decision in Jankiraman is based, inter alia, on O.M. dated 12.01.1988. The facts of the cases dealt with in the decision in Jankiraman do not indicate that the Court took the view, that even though the charge-sheet against the government servant was framed and direction given to dispatch the same to the government servant as a result of the decision to initiate disciplinary proceedings taken prior to the meeting of the D.P.C., that was not sufficient to attract the sealed cover procedure merely because service of the charge-sheet was effected subsequent to the meeting of the D.P.C. Moreover, in Jankiraman itself, it was stated thus:

'14. To bring the record up to date, it may be pointed out that in view of the decision of this Court in Union of India vs. Tejinder Singh, [1991] 4 SCC 129, decided on September 26, 1986, the Government of India in the Deptt. of Personnel and Training issued another Office Memorandum No.22011/2/86. Estt. (A) dated January 12, 1988 in supersession of all the earlier instructions on

the subject including the Office Memorandum dated January 30, 1982 A further guideline contained in this Memorandum is that the same sealed cover procedure is to be applied where a government servant is recommended for promotion by the DPC, but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken.

15. These differences in the two Memoranda have no bearing on the questions to be answered.'

(emphasis supplied)

12. Thereafter, in Jankiraman, the conclusions of the Full Bench of the Tribunal, under consideration, were quoted, and then while restating that the conclusions of the Tribunal could be reconciled, it was further stated, thus:

'17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each

other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To, deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.'

(emphasis supplied)

13. It will be seen that in Jankiraman also, emphasis is on the stage when a decision has been taken to initiate the disciplinary proceedings' and it was further said that 'to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee'. The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in 'this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the chargesheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the

decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.

14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee is emphasised in para 17 of the decision. Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context

in which it is used. Meanings of the 'word issue' given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; to give or send out authoritatively or officially; to send forth or deal out formally or publicly-, to emit, put into circulation'. The issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

15. Thus, we have no hesitation to hold that the view taken by the learned Single Judge that issue means service of charge-sheet, in our considered opinion cannot be sustained and as such, the order impugned deserves to be quashed and as such is set-aside. The appeal is **allowed**.

16. Ordered accordingly.

C.C.as per rules.

(S.K. SETH)
JUDGE

(SMT. ANJULI PALO)
JUDGE

@shish