

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 30<sup>th</sup> SEPTEMBER, 2024**

**WRIT PETITION NO.16471 of 2017**

***SURAJ SINGH SHIKARWAR***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance :**

***Shri S.D. Mishra – Advocate for the petitioner.***

***Shri Jitendra Shrivastava – Panel Lawyer for the respondents-State.***

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**Reserved on : 31/07/2024**

**Pronounced on : 30/09/2024**

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:*

**ORDER**

Petitioner has filed this petition under Article 226 of the Constitution of India assailing the chargesheet dated 4th July, 2017 (Annexure P/8) levelling two charges against him. The petitioner is also challenging the order dated 13th September, 2017 (Annexure P/12) whereby the Enquiry Officer has been appointed. The challenge is founded mainly on the ground that the enquiry is being conducted against

the petitioner after a major delay from the date when cause of action arose, therefore, on the ground of delay it is sought to be quashed.

2. Challenge is also founded on the ground that the charges levelled against the petitioner that too on the basis of complaint made by unknown person is infact no charge and enquiry has already been conducted in this regard. Conclusion was drawn in favour of the petitioner, but despite that just to harass him, the respondent-authority initiated enquiry and issued chargesheet without there being any foundation for the same.

3. During the course of argument, learned counsel for the petitioner has tried to establish that Charge No.1 levelled against the petitioner with regard to suppression of fact about pending criminal case is improper. He has submitted that petitioner has not suppressed any material fact for the reason that in Column No.14 of the form submitted by him that is annexed along with Annexure P/10 the information which was to be supplied to the employer that does not speak about pending criminal case but it is confined to the conviction of the person and since the petitioner was not convicted, therefore he had not given any information, although immediately after acquittal in the year 1998, he informed the department and supplied a copy of the judgment of acquittal. Further, a preliminary enquiry was conducted by the department on a complaint made against him and in the said enquiry the officer conducting enquiry has given a finding that petitioner has not suppressed any such information. The said report is also available on record as Annexure P/1. He has submitted that once the said enquiry was closed by the department then issuing

chargesheet after such a long time is not proper and as such the said chargesheet should be quashed. Learned counsel for the petitioner has also placed reliance upon an order passed by this Court in W.P. No.12170/2021 (*Mohinder Singh Kanwar vs. The State of M.P. & others*) decided on 21.04.2023 in support of his submissions.

4. Learned counsel for the respondents/State has submitted their reply and opposed the submissions made by the learned counsel for the petitioner. In the reply it is mentioned that the chargesheet cannot be questioned in a petition filed under Article 226 of the Constitution of India. He has submitted that a remedy is available to the petitioner to make a representation against the said chargesheet. However, in support of their submissions, respondents have also relied upon several decisions which are quoted in the reply itself.

5. Considering the submissions made by learned counsel for the parties and on perusal of the record, it is necessary to answer the question raised before the Court for proper adjudication of the case and to resolve the controversy involved, it is apt to take into account the necessary facts in nutshell.

6. The petitioner was working in the respondent-department and a complaint was made before the State Government on 08.08.2016 by someone using a bogus name neither known to the petitioner and nor to the department alleging therein that the petitioner came into respondent-department in the year 1988 through Public Service Commission on the

post of Assistant Director (Technical) but he suppressed the information about a pending criminal case registered against him vide Crime No.166/83 under Section 324 of Indian Penal Code at Police Station Jhansi Road, Gwalior and that fact was ascertained by the department later on but in column No.12(A) and 12(B) of the Character Verification Form, incorrect information was conveyed and therefore, enquiry be conducted in that respect and services of the petitioner be dismissed.

7. According to the averments made in the petition, on earlier occasion a complaint of similar nature was made to the department and to ascertain the said allegation made in the complaint, an enquiry was conducted by the department and report of enquiry was submitted on 07.09.2007. The report is available on record as Annexure P/1. From the said report, it is clear that a detailed enquiry was conducted but the complainant namely Ashok Kumar Pardesi did not appear in the enquiry and it was presumed that the complaint was made under a false name. Although, as per the petitioner, he worked in J.K. Cotton Mill, Kanpur, from 24.07.1984 to 1985 in Victoria Mill, Kanpur (Government Organization), from 1985 to 1987 in J.C. Mill and from October, 1987 till joining service in the respondent-department. The name of the petitioner in the service record is recorded as Suraj Singh whereas the case mentioned in the complaint is registered in the name of Shri Udaiveer Singh. As per the report called from the concerned Court of Gwalior, the case which was said to have been registered in the name of petitioner, has already been dismissed. The information with regard to dismissal of the case mentioned in the report, was conveyed to the respondent-department

by the petitioner in the year 1988 and as such the report reveals that nothing was suppressed by him. It has also been observed in the report that petitioner has not suppressed any material information. In the report it has also come up that the petitioner was holding additional charge of Managing Director, Madhya Pradesh State Industrial Association with effect from 12.02.2004 to 20.02.2004, total 08 days and petitioner was enquiring about the prevailing corruption in the department and as such the employees of the Association under a conspiracy, made false allegations against the petitioner so as to remove him from the said additional charge and as such that report, according to the petitioner, was conclusive and no further enquiry was required to be conducted. The Director of the respondent-department has informed the State Government that a false complaint was made against the petitioner and petitioner himself has not accepted the post of Managing Director and as such, it is informed that the complaints against the petitioner were being made under the false name but all the complaints were found misconceived and incorrect.

**8.** Receiving a complaint on 08.08.2016, the Superintendent of Police, South Bhopal also wrote a letter to the Superintendent of Police, Head Office, Bhopal on 30.12.2016 that on an application submitted by one Krishnapal Singh Ahirwar when enquiry was conducted against the petitioner, it was found that the name of the complainant and the address given in the application was not found correct and as such, statement of complainant could not be recorded. The Superintendent of Police has, therefore, opined that the allegations made against the petitioner is related

to the respondent-department where he is posted, therefore, it would be proper if the enquiry is conducted by the concerned department.

9. The department, thereafter, issued a show cause notice to the petitioner on 21.09.2016 (Annexure P/6) alleging therein that the complaints against him were made to the concerning Minister and Principal Secretary and the same are forwarded for comments and as such, petitioner was asked to submit his explanation as to why a departmental enquiry under Rule 14 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'CCA Rules') shall not be initiated against him. It is alleged therein that a crime vide Crime No. 166/83 under Section 324 of IPC was registered against the petitioner at Police Station Jhansi Road, Gwalior and challan was filed in the Court of Chief Judicial Magistrate, Gwalior on 24.09.1983 and the said case continued in the Court upto 1997 whereas in the year 1988 for joining the Government Service, incorrect information was provided in Column 12(A) and 12(B) of the Character Verification Form submitted in the Madhya Pradesh Public Service Commission as such it is alleged that petitioner's conduct comes within the purview of misconduct as has been prescribed under Rule 2(i)(ii) of Rule 3(1)(i)(ii)(iii) of the Madhya Pradesh Civil Services (Conduct) Rules, 1965 (hereinafter referred to as ('Conduct Rules, 1965)). In the complaint, it is also alleged that when petitioner was posted as Deputy Director (Technical) in the respondent-department then in the year 1995, four posts of Assistant Grade III were required to be filled up. However, without following proper procedure and without conducting proper

examination, four employees were appointed on the post of A.G. III amongst them one employee Shri Gyanendra Kushwaha was his close relative.

**10.** The petitioner, pursuant to the said show cause notice, submitted his reply on 05.11.2016 (Annexure P/7) wherein he demanded the details of the employee appointed namely Gyanendra Kushwaha who has been alleged to be his close relative and also the proof showing his relation with the said employee. He has also demanded the Character Verification Report and Form submitted by him at the time of his appointment in the respondent-department. Again on 04.07.2017, a chargesheet was issued to the petitioner levelling two charges. One relating to Crime No.166/83 for the offence registered under Section 324 of IPC and second appointment against four posts of Assistant Grade III. The said chargesheet is filed as Annexure P/8 which is sought to be quashed in the present case.

**11.** The challenge is made basically on the ground that the charge of suppression of material information is unfounded because no incorrect information was conveyed by the petitioner and nothing was suppressed by him. It is also claimed that despite repeated requests, material documents were not supplied to him and according to the petitioner enquiry has already been conducted so as to ascertain the said fact but even otherwise no enquiry should have been initiated when complaint is made by an unknown person on a false name or it is anonymous. It is also submitted that an enquiry after almost 08 years of the alleged incident and also submitting an enquiry report is not proper and

chargesheet on the ground of delay can also be quashed. Enquiry/chargesheet is also being assailed on the ground of malafide.

**12.** Respondents have submitted their reply justifying the charge levelled in the chargesheet and placed reliance upon a number of cases quoted in the reply itself.

**13.** Respondent No.3 has also filed separate reply stating therein that the charges levelled against the petitioner are proper and enquiry was required to be conducted.

**14.** Considering the fact with regard to the charge levelled against the petitioner in respect of a criminal case registered against him and information not correctly conveyed to the department by filling Column No.14 of the application form, which is available on record as Annexure P/10 however, the petitioner has filled the form conveying information with regard to criminal antecedent and respondents have not denied about the said information, it would be apt to reproduce the information regarding criminal antecedent sought by the respondents and conveyed by the petitioner, which is as under :-

क्या आपको कभी शासकीय या अन्य सेवा से बर्खास्त किया गया गया या हटाया गया ? या किसी न्यायालय द्वारा अभियोजित (दण्डित) किया गया है ? यदि हाँ तो विवरण दीजिये ा	नहीं
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**15.** From perusal of the aforesaid column-14 which is a part of the application form submitted by the petitioner before the Public Service Commission, Madhya Pradesh and it is clear that Column No.14 is very specifically asking information about conviction in any criminal case and answer to that effect has been given by the petitioner, therefore, as per the facts available in the case, nothing has been suppressed and no incorrect information was conveyed by the petitioner. As per the facts narrated in the petition, the judgment passed in a criminal case discharging the petitioner was also placed by the petitioner before the respondent-department. In an earlier enquiry conducted for the same charge in which petitioner was given clean chit saying that nothing was suppressed by the petitioner and no incorrect information was given by him, I am surprised that when the record contains a specific information which has been supplied by the petitioner and that aspect has been enquired on earlier occasion then as to why again the enquiry is being conducted showing chargesheet levelling the same charge. It is also clear from the reply of the respondents that they have not disputed the form which has been submitted by the petitioner before the Public Service Commission (Annexure P/10) and as such, the very foundation of charge alleging that in Column No.12(A) and 12(B) incorrect information was supplied by the petitioner is completely missing. As such, I am of the opinion that the respondents are unnecessarily creating pressure upon the petitioner initiating enquiry on the basis of charge which factually does not exist.

**16.** Likewise, the charge No.2 relates to an incident occurred in the year 1995 and that charge is being enquired about after almost 22 years and it

is also not proper on the part of the respondents because earlier also complaint was made about the alleged illegality committed by the petitioner but report submitted in 2007 which is available on record, contains that false charges were levelled against the petitioner to remove him from the charge of the post. As such, it is apparent that after such a long delay, enquiry cannot be initiated.

**17.** Although, the respondents have taken a stand in their reply stating that chargesheet cannot be challenged only on the ground of delay and petitioner has a remedy to make a representation against the same but petition cannot be entertained, I am not satisfied by the aforesaid averments made by the respondents in their reply and the stand of the respondents because the same has been discussed hereinabove. Pertinently, the Government has already issued instruction that enquiry cannot be initiated on an anonymous complaint, knowing fully well that the complaint was made against the petitioner by an unknown person, however, the chargesheet was still issued to him.

**18.** The petitioner has placed reliance upon an order passed by this Court in W.P. No.12170 of 2021 (*Mohinder Singh Kanwar vs. The State of Madhya Pradesh and others*) decided on 21.04.2023 wherein the chargesheet issued to the petitioner was challenged mainly on the ground of delay and this Court, taking aid of several judgments of Supreme Court and also of the High Courts, observed as under :-

**“21.** Further, in the present case, the charge sheet has also been assailed by the petitioner on the ground of delay

in initiating the proceeding saying that the charges relate to the incident occurred in the year 2013-14, but the charge sheet has been issued in the year 2021. However, the petitioner has submitted that the foundation of charges relates to the incident on the basis of which crime was registered vide Crime Nos. 49/2014 and 50/2014, although the State dropped the proceedings initiated under the said crime numbers and also submitted closure reports, ergo initiation of proceedings after long lapse of almost seven years is not proper.

22. Learned counsel for the petitioner has placed reliance upon the case of *Chaman Lal Goyal (supra)* in which the Supreme Court has considered the delay in issuing charge sheet and also observed that in normal course the disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. The Supreme Court has also observed that although there is no predetermined principle laid down as to within what period it should be done, but it depends upon facts of each case. As per the facts of the present case, as have been mentioned hereinabove, it is apparent that issuing a charge sheet to the petitioner not containing very grave charges and even though the government submitted a closure report in the cases which have been given rise to frame the charge against the petitioner and that too there is unexplained delay for initiating the disciplinary proceeding the charge sheet can be quashed because the disciplinary proceeding is nothing but an empty formality of the factors involved in the case because the cases were registered in the State of Chhattisgarh alleging involvement and participation of the petitioner in the election of 2014 but in 2023 it would be difficult for the enquiry officer to conduct an enquiry

or to prove the charges when offences have already been withdrawn by the State.

**23.** Further in the case of *Anant R. Kulkarni (supra)*, the Supreme Court has also considered the aspect of initiating disciplinary proceeding belatedly and observed as under:-

***“ Enquiry at belated stage***

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion. (*Vide State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *State of Punjab v. Chaman Lal*

*Goyal* [(1995) 2 SCC 570 : 1995 SCC (L&S) 541 : (1995) 29 ATC 546], *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475], *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304 : AIR 2007 SC 906], *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] and *LIC v. A. Masilamani* [(2013) 6 SCC 530 : JT (2012) 11 SC 533].)

**24.** Here in this case, as has been considered that the charges levelled against the petitioner in the impugned charge sheet *prima-facie* are vague and also not grave in nature, the disciplinary proceeding after lapse of almost 7 years is not proper.

**25.** In the case of *N. Radhakishan (supra)*, the Supreme Court has deprecated the irregularities of initiating departmental enquiry after much delay that too without explaining the reason for the same and also observed that it would cause great prejudice to the delinquent and observed as under :-

“**19.** It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a

right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

*(Emphasis supplied)*

**26.** The Supreme Court in the case of ***Bani Singh (supra)*** has also observed that the delay of 12 years in initiating disciplinary proceeding without any satisfactory explanation for inordinate delay, it would be unfair to permit the department to proceed with the enquiry. The Supreme Court has observed as under :-

“4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on

merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them 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. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

27. Further, in the case of *M.V.Bijlani (supra)* the Supreme Court has also deprecated the practice of issuing the charge sheet after six years of the incident and keeping the enquiry pending for a further period of seven years. The delay is also unexplained, causing prejudice to the petitioner working as police officer, not being considered for promotion etc. Here in this case as has already been observed that there is a delay of seven years in issuing the charge sheet and even after issuance of charge sheet there is no progress in the enquiry, the charges are also not so grave in nature. It is also showing the seriousness of the department as to in what manner they are conducting enquiry. Therefore, in the opinion of this Court, such a charge sheet and consequential disciplinary proceeding cannot be allowed to be

continued and the same are liable to be quashed for the reasons elaborated hereinabove.

**28.** *Ex-consequentia*, this **petition is allowed**. The impugned charge sheet dated 27.05.2021 (Annexure P/11) is hereby quashed. However, looking to the facts and circumstances of the case, there shall be no order as to costs.”

**19.** In view of the aforesaid, it is also clear that as per the facts of present case also, there is much delay in initiating proceedings against the petitioner and issuing chargesheet of the incident which took place 20 years ago, this court does not feel proper to initiate enquiry, especially in a circumstance when charges levelled against the petitioner have already been enquired about and he was given a clean chit.

**20.** Even otherwise, recently, the Supreme Court in one of the case has considered this aspect that when a person facing criminal trial for the charges levelled against him under the provisions of Indian Penal Code and later on acquitted him then that would not affect his service career. Here in this case, the offence was registered against the petitioner and he was discharged in the same and copy of the judgment was delivered by the petitioner to his employer (the respondent-department herein). The enquiry report was also in his favour containing findings that the petitioner has not suppressed any information.

**21.** In a similar circumstance, the law was laid down by the Supreme Court in the case of **Pawan Kumar Vs. Union of India and another** **2022 SCC OnLine SC 532** wherein it was as under :-



“**38.10.** For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.”

**21.** In view of the aforesaid law laid down by the Supreme Court and in the facts and circumstances of the case, I am also of the opinion that the proceedings initiating departmental enquiry against the petitioner by issuing chargesheet, which is impugned in this petition, is not proper and as such, this Court, exercising the powers of extraordinary jurisdiction under Article 226 of the Constitution of India, can interfere in the matter and restrain the department to proceed further. Resultantly, this petition is **allowed**. The impugned chargesheet dated 04.07.2017 (Annexure P/8) and the order dated 13.09.2017 (Annexure P/12) appointing enquiry officer and presenting officer are also quashed.

**22.** In the facts and circumstances, no order as to costs.

**(SANJAY DWIVEDI)**  
**JUDGE**