

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 21ST OF APRIL, 2023

WRIT PETITION NO. 12170 OF 2021

BETWEEN:-

**MOHINDER SINGH KANWAR, S/O SHRI
SHYAMLAL KANWAR, AGED ABOUT--,
PRESENTLY POSTED AS DEPUTY
SUPERINTENDENT OF POLICE, SPECIAL
BRANCH, POLICE HEADQUARTER, BHOPAL
(M.P.).**

...PETITIONER

(SHRI PANKAJ DUBEY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH,
THROUGH THE ADDITIONAL SECRETARY
OF HOME DEPARTMENT, MANTRALAYA,
VALLABH BHAVAN, BHOPAL (M.P.)**
- 2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTER, BHOPAL (M.P.).**
- 3. THE UNDER SECRETARY, DEPARTMENT OF
HOME, MANTRALAYA, VALLABH BHAVAN,
BHOPAL (M.P.).**

.....RESPONDENTS

(SHRI GIRISH KEKRE – GOVERNMENT ADVOCATE)

Reserved on: 24.01.2023

Pronounced on: 21.04.2023

This petition having been heard and reserved for orders, coming

on for pronouncement this day, the Court pronounced the following: :

ORDER

The issuance of charge sheet levelling five charges became a cause for the disgruntled petitioner to knock the doors of judiciary by invoking Article 226 of the Constitution, challenging validity, propriety and legality of order dated 27.05.2021 (Annexure P/11).

2. Learned counsel for the petitioner has assailed the said charges mainly on the ground that the charges levelled against the petitioner are vague and without any foundation. The challenge has also been made on the ground that the charges levelled relate to the year 2013 and the charge sheet has been issued in the year 2021, therefore on the ground of delay also the charge sheet is liable to be quashed.

3. Considering the legal and factual submission made by the learned counsel for the parties and to resolve the controversy involved in the case, it is necessary to consider the facts of the case, which in nutshell are:

4. The encapsulated facts are that the petitioner was appointed as a Deputy Superintendent of Police after participating in selection process conducted by the Madhya Pradesh Public Service Commission in the year 2001. Though he belonged to scheduled tribe category but he participated in number of important operations of the police and completed them successfully.

5. The petitioner belongs to batch of 2001 of the State Police Services. His batch-mates were promoted to the post of Additional Superintendent of Police in the year 2012-13. The petitioner was also entitled to be promoted to the post of Additional Superintendent of Police in the year 2013 but due to disciplinary action against him he was

placed under suspension on 06.03.2009 when he was posted at Dewas as SDO (P) Sonkaksha, although the said suspension was set aside by the competent authority and he was reinstated in service vide order dated 31.04.2009 and after reinstatement he was posted as Deputy Superintendent of Police, Police Training Research Institute.

6. In pursuance to registration of a crime against the petitioner vide Crime No. 99/2009 and challan being filed before the competent court, a charge sheet was issued to the petitioner on 30.09.2009 and he was proceeded ex-parte and vide order dated 22.12.2014 a penalty of removal from service was inflicted upon him.

7. The petitioner preferred an appeal against the order of disciplinary authority before the appellate authority and vide order dated 06.03.2019 the order of removal from service was set aside by the authority and the petitioner was directed to be reinstated and he joined the service back on 07.03.2019.

8. As per the petitioner, earlier when he was suspended on account of challan being filed in Crime No. 99/2009, the trial in the said case was proceeded and the trial was conducted in the Special Court and finally the petitioner was acquitted from all the charges levelled against him. An appeal was preferred against the order of acquittal of the petitioner and the said appeal is still pending in the High Court.

9. As per the petitioner, there were two enquiries pending against him in which he was proceeded ex-parte. The second enquiry was pertaining to an investigation which was conducted by the petitioner way back in the year 2005 in Crime No. 14/2005 in which no charge sheet was issued to the petitioner and the State Government after examining the matter dropped the said enquiry vide order dated 30.04.2019 (Annexure P/7) as the petitioner was not found involved in

the alleged offence

10. Thereafter, petitioner moved a representation (Annexure P/8) claiming promotion to the post of Additional Superintendent of Police and other consequential benefits on 13.06.2019 mentioning therein that he has been acquitted and enquiry has also been dropped but merely because an appeal is pending he cannot be deprived to get the benefit of promotion and other benefits.

11. By communication dated 03.11.2020 (Annexure P/10), the Police Headquarter sought clarification since the State has preferred an appeal which is pending the benefit of promotion and other consequential benefit can be granted to the petitioner or not. Thereafter, a notice was again issued to the petitioner on 27.05.2021 (Annexure P/11) stating therein that the department has decided to institute a departmental enquiry against him. The statement of charges, details of charges and the list of documents and witnesses were also annexed with the said notice. The petitioner was required to file reply within 15 days of the said notice. The petitioner submitted reply to the said show cause notice but thereafter charge sheet was issued to him levelling five charges against him.

12. In the statement of charges, the details of two cases registered against the petitioner have been given and those cases are registered vide Crime No. 49/2014 for the offence punishable under Sections 341, 294, 323, 506, 427, 147, 148, 149, 324 and 365 of the Indian Penal Code and Crime No. 50/2014 for the offence punishable under Sections 186, 332, 365, 323, 506 and 34 of the Indian Penal Code. In Crime No. 49/2014, apart from the petitioner there were 15 to 20 other accused persons and in the Crime No. 50/2014, apart from the petitioner there were two other accused persons.

13. From the charge sheet and the statement of charges it is clear that the charges are related to the crime Nos. 49/2014 and 50/2014 which were registered in the State of Chhattisgarh alleging that during Parliament Election of 2014 the petitioner participated in the election campaign of the Congress candidate. However, both the said offences were withdrawn by the State and as such closure report was submitted by the police in the court and on 18.02.2020, the court accepted the closure report relating to Crime No. 50/2014 but refused to accept the closure report of Crime No. 49/2014 against which the other two accused persons preferred a revision i.e. CRR No. 663/2020 before the High Court of Chhattisgarh and the High Court entertained the revision and vide order dated 16.10.2020 (Annexure P/12) stayed the proceedings of Crime No. 49/2014.

14. As per the petitioner, from the charge sheet issued vide Annexure P/11 it is clear that the charges levelled against him were related to the offences registered against him vide Crime Nos. 49/2014 and 50/2014 but in the charge sheet no detail has been given as to when and where the petitioner committed the said offences. As such, according to the petitioner and as pleaded in the petition, the charges are vague. The charge sheet has been criticized by the petitioner saying that the charges are vague as the same are not disclosing any specific time and date of commission of offence and therefore, according to the petitioner, it is difficult for him to answer about the charges levelled. It is also averred in the petition that when criminal case registered vide Crime No. 50/2014 has been dropped by the State then the instant charge sheet cannot be founded with the facts of said offence and no misconduct said to have been committed by the petitioner. It is also pleaded in the petition that although a closure report was submitted with regard to

Crime No. 49/2014 but that was not accepted by the court and the said order of refusal was challenged before the High Court of Chhattisgarh and the Court entertaining the revision petition stayed the proceeding of Crime No. 49/2014. The said revision, according to the petitioner, is pending before the High Court of Chhattisgarh. It is also criticized by the petitioner that the charge sheet cannot be issued after such a belated stage because the incident occurred in the year 2014 and the charge sheet has been issued in the year 2021. Therefore, there is a long delay in issuing the charge sheet and as such the delay is so fatal and charge sheet is liable to be quashed.

15. Although reply has been filed by the respondents/State but they have not answered the specific queries put by the petitioner while criticizing the action of the respondents saying that charges are vague and foundation of charges are Crime Nos. 49/2014 and 50/2014. It is stated in the reply that no prejudice is caused to the petitioner. The respondents have stated in their reply that although the charges relating to Crime No. 50/2014 have been withdrawn by the State but the department can still initiate disciplinary proceedings.

16. To strengthen his argument, learned counsel for the petitioner relied upon the decisions rendered in the cases of *State of Punjab vs. V.K. Khanna-(2001) 2 SCC 330*, *State of Punjab and others vs. Chaman Lal Goyal - (1995) 2 SCC 570*, *State of A.P. vs. N. Radhakishan-(1998) 4 SCC 154*, *Anant R. Kulkarni vs. Y.P. Education Society and others -(2013) 6 SCC 515*, *Prem Nath Bali vs. Registrar, High Court of Delhi and another-(2015) 16 SCC 415*, *State of Madhya Pradesh. v. Bani Singh and another - 1990 Supp SCC 738*, *M.V. Bijlani v. Union of India and other-(2006) 5 SCC 88*, *Union of India and others v. Gyan Chand Chattar-(2009) 12 SCC 78* and *Govt.*

of A.P. and others and others vs. A. Venkata Raidu-(2007) 1 SCC 338.

17. Here, I need to focus on the charges and therefore they are copied as under:-

“आरोप क. 01 : निलंबन अवधि के दौरान निलंबन मुख्यालय भोपाल होने के बावजूद भी बिना अनुमति मुख्यालय छोड़ना व अवैध कृत्य में शामिल होकर म0प्र0 पुलिस रेग्युलेशन की धारा 64(3) तथा धारा 64(11) का उल्लंघन करना एवं मध्य प्रदेश सिविल सेवा (आचरण) नियम 1965 की धारा 7 का उल्लंघन करना।

आरोप क. 02 : लोकसभा चुनाव के समय कोरबा लोकसभा क्षेत्र के मतदाताओं को डराना-धमकाना व मारपीट कर मध्य प्रदेश सिविल सेवा (आचरण) नियम 1965 की धारा 3(1) (तीन) तथा धारा 3क (ग) का उल्लंघन करना।

आरोप क. 3 : श्री कीर्तन सिंह राठौर, तत्कालीन नगर पुलिस अधीक्षक, कोरबा के साथ अभद्र व्यवहार कर शासकीय सेवक के अनुकूल आचरण न करना मध्यप्रदेश सिविल सेवा, आचरण नियम के उप नियम 3(1) (तीन) का उल्लंघन है।

आरोप क. 04 : छत्तीसगढ़ राज्य के नवम्बर 2013 के विधानसभा चुनाव में कांग्रेस पार्टी के पक्ष में सक्रिय रूप से प्रचार-प्रसार एवं विभिन्न आमसभा, रैली व चुनावी कार्यक्रम में सम्मिलित होकर मध्य प्रदेश सिविल सेवा (आचरण) नियम 1965, के नियम 5(1) व 5(4) का उल्लंघन करना।

आरोप क. 05 : लोकसभा चुनाव 2014 में छत्तीसगढ़ राज्य के कोरबा जिले में कांग्रेस पार्टी के पक्ष में प्रचार-प्रसार व सक्रिय भागीदार रहना, मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 के नियम 5(1) का उल्लंघन करना।”

18. A bare look to the above charges, it transpires that Charge No. 1

does not particularize specific period when allegedly petitioner violated the provision of Section 64(3) and 64(11) of the M.P. Police Regulation as also Section 7 of the M.P. Civil Services (Conduct) Rules, 1965. Further, Charge No. 2 does not crystallize as to what material got gleaned by the prosecution, which could be used against the petitioner especially when the State had filed closure report in Crime No. 49/2014 inasmuch as the charges were directly related to the said crime and proceeding related thereto had been stayed by the High Court of Chhattisgarh. As regard Charge No. 3, it relates to Crime No. 50/2014 and the prosecution after withdrawing its proceedings submitted closure report which got accepted by the Court. Similarly Charge No. 4 runs short of adequate material gleaned by the prosecution which can justify participation of petitioner in the election campaign, nor does it clarify that the petitioner was involved in conducting any public programme/rally or any other election work. Obviously Charge No. 5 is relatable to Crime No. 49/2014 and the proceedings thereof have already been stayed by High Court of Chhattisgarh.

19. Hence, under such a circumstance, when situation is not clear as to whether the State should proceed with the prosecution or their proposal for withdrawal of the prosecution would be accepted, the enquiry on the allegations, which are at present not survived, is not proper. In this regard, the Supreme Court in the case of *A. Venkata Rayudu (supra)* has observed as under:-

“9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge 1,

what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO, etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge 1 was not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.

10. Thus, there is no force in this appeal. The appeal is accordingly dismissed. There shall be no order as to costs.”

20. The Division Bench of this Court in the case of *State of M.P. and another vs. Akhilesh Jha and another* reported in *2019 SCC OnLine MP 4728* relying upon the case of *A. Venkata Raidu (supra)* has observed as under:-

“26. The purpose of issuance of show-cause notice/charge-sheet is to give a clear impression with accuracy and precision to the delinquent employee as to what is the charge against him so that he can file an effective reply and meet the allegations with clarity. Thus, minimum expectation from the employer and

minimum requirement of law was that charge should be clear and not ambiguous. In the instant case, even the name of superior officers whose directions are allegedly violated by the petitioners were not disclosed. What is the charge cannot be gathered from the reply of the respondent no. 1. Moreso, when respondent no. 1 nowhere admitted that he had established/constituted a “Gunda squad” indeed his stand was that there was a ‘flying squad’ which was established in order to conduct Assembly elections in a free and fair manner. In this view of the matter, we are unable to telescope para 3 of the reply into the charge-sheet to give a stamp of approval or validity.

27. The Constitution Bench Judgment in the case of *Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 was pertained to a criminal prosecution. The principles enunciated therein were made applicable to a plea of delay in taking disciplinary proceedings as well by Supreme Court in *State of Punjab v. Chaman Lal* (1995) 2 SCC 570. In *Chamanlal* and in *Anant R. Kulkarni* (supra), the Supreme Court held that right to speedy trial is flowing from Article 21 of the Constitution. Where court comes to the conclusion that where right to speedy trial of the delinquent employee has been infringed, the charges or the conviction, as the case may be, will be quashed. However, it was made clear in both the judgments that Court needs to carefully examine the aspect of delay coupled with the aspect of the gravity/magnitude of the charges involved.

28. The Indore Bench of this Court has already directed that adverse remarks made against the respondent no. 1 by the enquiry officer be expunged. The charge against the respondent no. 1 is not so grave which may become a reason for permitting the employer to continue with the enquiry when employer has miserably failed to explain the delay in issuing the charge-sheet and conclude the enquiry.

29. In the light of aforesaid analysis, in our view, the Tribunal has undertaken judicial review of the charge-sheet on permissible grounds. Since petitioner/Department failed to show the reason of belatedly issuing the charge-sheet, the Tribunal has rightly interfered with the vague charge-sheet. The petitioners have also failed to show that charges are so grave that despite delay, department can be permitted to proceed with the enquiry.

(Emphasis supplied)

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 dehors 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-consequencia*, 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.

(SANJAY DWIVEDI)
JUDGE