

HIGH COURT OF MADHYA PRADESH, JABALPUR

Writ Petition No.14649/2021

Tarun Kumar Mishra

Versus

State of M.P. & Ors.

Date of Order	21.10.2021
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner : Shri D.K. Tripathi, Advocate. For Respondent No.1 : Shri Rahul Deshmukh, Panel Lawyer. For Respondents No.2 and 3 : Shri Pushpendra Yadav, Advocate.
Law laid down	As per the provisions of Rule 14 of MP Civil Services (Classification, Control & Appeal) Rules, 1966, the disciplinary authority has to apply its mind separately at two different stages, (i) initiation of proceeding and (ii) approval of charge-sheet. It is not enough that if the disciplinary authority has formed an opinion to initiate the disciplinary proceeding and signed it, but for issuance of charge-sheet it would not be required to sign it by the disciplinary authority. The disciplinary authority has to sanction the charge memo by signing it, although disciplinary

	authority may assign some subordinate officer to serve the same upon the delinquent. In absence of approval by the disciplinary authority, if any charge-sheet is issued, the same would become <i>non est</i> in the eyes of law.
Significant Para Nos.	13 to 17

Reserved on : 04.10.2021

Delivered on : 21.10.2021

(O R D E R)
(21.10.2021)

This petition under Article 226 of the Constitution of India is directed against the issuance of charge-sheet dated 16.01.2020 and supplementary charge-sheets dated 15.05.2020 and 14.01.2021 to the petitioner by the authority, not competent to do so.

2. The main thrust of challenge to the charge-sheets is about its issuance by the authority, not having competence to do so. Further, the issuance of charge-sheets is assailed on the ground that the charges levelled therein are vague and insufficient to constitute any misconduct against the petitioner.

3. Shri Pushpendra Yadav, learned counsel appearing for main contesting respondents No.2 and 3, on the basis of reply submitted on behalf of these respondents

alongwith the documents tried to convince this Court about the competence of the authority justifying that the charge-sheets have been issued by the competent authority.

4. Focusing on the charge-sheet originally issued on 16.01.2020 (Annexure-P/1) levelling as many as six charges against the petitioner, the learned counsel for the petitioner submits that it is issued by the Chief General Manager. However, since the petitioner is holding the post of Superintending Engineer, therefore, according to the petitioner, the Managing Director is the competent authority to issue the charge-sheet. To reinforce his contention, the petitioner has filed a document demonstrating that it is the Managing Director, who could issue the charge-sheet to the petitioner.

5. Shri Pushpendra Yadav, learned counsel appearing for respondents No.2 and 3 did not dispute that it is the Managing Director who is competent authority to issue the charge-sheet to the petitioner, but he tried to justify that the charge-sheet has been issued by the competent authority by referring to the documents filed alongwith the application for taking documents on record i.e. I.A.No.8640/2021 wherein it is depicted in note-sheet dated 28.12.2019 that the show cause notice was issued to the

petitioner on 13.12.2019, which was replied by him on 21.12.2019 and after perusal of reply submitted by the petitioner, since it was not found satisfactory, therefore, following opinion was given by the Managing Director:-

“Answer not satisfactory. To initiate DE of Shri T.K. Mishra.”

Thereafter, there is another note-sheet dated 15.01.2020, which indicates that the charge-sheet was prepared and placed before the Managing Director for its approval, although that note-sheet does not contain the signature of the Managing Director.

6. For ready reference, the contents of note-sheet dated 15.01.2020 are reproduced hereinbelow:-

“8 कंडिका क्र. 7/एन में दिये गये निर्देशानुसार श्री टी. के. मिश्रा, अधीक्षण अभियंता (निल) के विरुद्ध जारी किये जाने वाले आरोप पत्र की स्वच्छ टंकित प्रतियां हस्ताक्षरार्थ प्रस्तुत है ।”

7. Taking strength from the aforesaid note-sheet, the learned counsel for the petitioner submits that although a decision for initiating departmental enquiry was taken by the competent authority, but the charge-sheet issued to the petitioner levelling as many as six charges has never been approved or signed by the competent authority and therefore as per the learned counsel for the petitioner, the charge-

sheet dated 16.01.2020 (Annexure-P/1) is void *ab initio* and is liable to be set aside.

8. Shri Pushpendra Yadav, learned counsel appearing for respondents No.2 and 3 drew attention of this Court towards the provisions of Section 14 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (for brevity "Rules, 1966"), in that, sub-rule (2) of Rule 14 makes it clear that it is for the disciplinary authority to form an opinion on the basis of material placed before him as to whether departmental enquiry has to be initiated or not. He emphasized that once opinion by the competent authority i.e. Disciplinary Authority/Managing Director has been given for initiation of departmental enquiry, it virtually suffices the purpose of fulfilling the requirement envisaged in Rule 14 and in such a situation, according to him, there is no requirement of signing the charge-sheet by the Disciplinary Authority. While drawing the attention of this Court towards the provision of sub-rule (4) of Rule 14, which provides as under:-

"(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require

the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.”

the learned counsel for respondents No.2 and 3 submitted that the disciplinary authority once formed an opinion to initiate the departmental enquiry then the charge-sheet can be issued by him or by any other authority, is a sufficient compliance of Rule 14 and does not make the charge-sheet illegal and it cannot be said that the charge-sheet has not been issued by the competent authority i.e. disciplinary authority. He also submitted that from the note-sheet dated 18.03.2020 filed by the respondents, it is clear that a decision for issuing supplementary charge-sheet has also been taken with the signature of disciplinary authority and as such the stand taken by the petitioner is misconceived and there is nothing illegal committed by the respondents while issuing the charge-sheets to the petitioner because those charge-sheets were not required to be signed by the disciplinary authority. The only requirement needed to be fulfilled was that the opinion should be formed by the disciplinary authority on the basis of material available as to whether the departmental enquiry is to be initiated or not and the said requirement as has been prescribed under Rule 14

of Rules, 1966 has been fulfilled. In support of his contention, the learned counsel for respondents No.2 and 3 has placed reliance on a decision of this Court reported in **ILR (2011) M.P. 1988 (Ramhet Tyagi v. State of M.P. & Ors.)** in which it is held by the Court that once a competent authority has taken a decision in the note-sheet for placing the delinquent under suspension and directed to issue the order in that regard and thereafter the order of suspension issued by other authority cannot be said to be illegal inasmuch as it has not been issued in the name of competent authority i.e. Collector.

9. Combating the submission made on behalf of the respondents, the learned counsel for the petitioner submitted that it does not fulfill the requirement provided under Rule 14 of Rules, 1966. According to him, merely forming an opinion by the disciplinary authority to initiate departmental enquiry does not mean that the charge-sheet framed and issued by other authority which is not the disciplinary authority or the competent authority to do so, can be treated to be an action in furtherance to the approval of the disciplinary authority and as such, the charge-sheet cannot be treated to be issued by the disciplinary authority or competent authority. Shri Tripathi relied upon a decision of the Supreme Court *in*

re Union of India & Ors. v. B.V. Gopinath rendered in Civil Appeal No.7761/2013 with connected appeals, wherein, the Supreme Court has dealt with the identical issue and finally came to hold in respect of *pari materia* provisions of Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 that if a charge-sheet is not issued by the disciplinary authority, it shall be treated to be without authority of law and therefore *non est* in the eyes of law.

10. Considering the rival submissions of the learned counsel for the parties and perusal of the documents produced by them, it is to be observed as to whether the requirement of Rule 14 is only to form an opinion by the disciplinary authority as has been submitted by the counsel for the respondents or in furtherance to that, the charge-sheet issued is also required to be approved by the disciplinary authority or not.

11. To get a clear picture, it is apt to reproduce the relevant portion of Rule 14 of the Rules, 1966, which is as under:-

“14. Procedure for imposing penalties. - (1)
No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 10 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15 or in the manner provided by the Public Servants' (Inquiries) Act, 1850 (37 of

1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to Inquire into the truth thereof.

Explanation. - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain :-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a)

xxx

xxx

12. Indisputably, the disciplinary authority i.e. Managing Director formed an opinion for initiation of departmental enquiry against the petitioner as per the provisions of Rule 14 of the Rules, 1966 because for disciplinary proceeding, the provisions of said Rule are applicable to the petitioner. Sub-rule (2) of Rule 14 of Rules, 1966 deals with the requirement of forming an opinion by the disciplinary authority on the basis of available material before him. In the present case, the said opinion has undoubtedly been taken by the disciplinary authority as is evident from the note-sheet produced by the respondents, but thereafter Rule 14(3) clearly lays down that where it is proposed to hold an enquiry against the government servant under Rules 14 and 15, the disciplinary authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant a copy of article of charges; the statement of imputation of misconduct or misbehaviour and the supporting documents including list of witnesses by which each article of charges is proposed to be proved.

13. In view of the above, it is crystalized that the submissions made by the learned counsel for the

respondents that once the disciplinary authority approved the initiation of the disciplinary proceeding, the charge-sheet can be drawn up by the authority other than the disciplinary authority, is not in consonance with the requirement of the provisions and as such, interpretation of such clause as has been presented by the learned counsel for the respondents is not acceptable. If the interpretation as has been presented by the counsel for the respondents is accepted for a moment, the same would extinguish the protection guaranteed under Article 311(1) of the Constitution of India and would also be in violation of protective provisions contained under Article 311(2) which ensure that no public servant should be dismissed; removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet out the allegations contained in the charge-sheet. Thus, according to me, the charge-sheet can be issued only upon the approval by the appointing/disciplinary authority which is none other than the Managing Director in the case at hand.

14. Albeit, Shri Yadav has emphasized the language used in sub-rule (4) of Rule 14 of Rules, 1966 and submitted that it clearly provides that the disciplinary authority shall deliver or cause to be delivered to the government servant a

copy of articles of charge, statement of imputation of misconduct or misbehaviour, meaning thereby it is not required for the disciplinary authority to sign the charge-sheet, but can be done by other authority. However, this analogy has been dealt with by the Supreme Court in the case of **B.V. Gopinath** (supra) relied upon by the counsel for the petitioner, wherein it is observed as under:-

“46. Ms. Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Addl. Solicitor General, the respondent is not claiming that rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Addl. Solicitor General, the CAT as well as the High Court erred in quashing the charge sheet as no prejudice has been caused to the respondent. In our opinion, the submission of the learned Addl. Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of law. This plea of the respondent has been accepted by the CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS(CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of

misconduct or misbehaviour into definite and distinct articles of charges. The term “cause to be drawn up” does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term “cause to be drawn up” merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed “definite and distinct articles of charge sheet”. These proposed articles of charge would only be finalized upon approval by the disciplinary authority. Undoubtedly, this Court in the case of P.V.Srinivasa Sastry & Ors. Vs. Comptroller and Auditor General & Ors.[19] has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that “However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority.” It is further held that “Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post.”

(emphasis supplied)

15. Considering the view taken by the Supreme Court hereinabove it is clear that in the present case merely because opinion has been taken by the disciplinary authority to initiate departmental enquiry but the charge-sheets issued to the petitioner, which are impugned in this petition,

admittedly not signed and approved by the disciplinary authority, the same are therefore *non est* in the eyes of law and are liable to be set aside. Since a similar point has been dealt with by the Supreme Court in the case of **B.V. Gopinath** (supra) and has laid down the law that charge-sheet is also required to be approved or signed by the disciplinary authority and cannot be issued without the approval/signature of the disciplinary authority by any other authority, this Court finds no reason to deviate from or take a different opinion.

16. So far as the case of **Ramhet Tyagi** (supra) relied upon by the counsel for the respondents is concerned, the law laid down by the High Court in that case has no application in the case at hand for the reason that in the said case the dispute was with regard to issuance of order of suspension and the said order was issued with the approval of the Collector/competent authority and was communicated through the District Education Officer and as such the plea taken by the employee about the sub-delegation of the power has been rejected by the Court saying that there was no sub-delegation but it was only an authorization by the competent authority to issue the order of suspension though the original decision for placing the employee under

suspension was taken by the competent authority. Here in this case, the disciplinary proceeding initiated as per Rule 14 of Rules, 1966 which are completed in various steps and forming an opinion to initiate departmental enquiry is one of the steps and issuance of charge-sheet in furtherance to the said decision and as has been held by the Supreme Court and also is requirement of Rule 14 of Rules,1966 that the charge-sheet is also required to be issued with the approval of disciplinary authority. In the present case, said requirement has not been fulfilled and this fact has not been disputed that the charge-sheet has not been approved by the disciplinary authority i.e. Managing Director. Therefore, I have no hesitation to say that the charge-sheets issued to the petitioner are illegal and without any competence and therefore *non est* in the eyes of law. As such, the charge-sheets dated 16.01.2020, 15.05.2020 and 14.01.2021 are hereby set aside.

17. However, such liberty is granted to the respondents that if they so require, may issue a fresh charge-sheet to the petitioner after following the procedure prescribed under Rule 14 of Rules, 1966 with the approval of the disciplinary authority.

18. The writ petition stands **allowed** with the aforesaid liberty to the respondents.

(Sanjay Dwivedi)
Judge

sudesh