

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 2nd MAY, 2022

WRIT APPEAL No.72/2022

BETWEEN :-

1. Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd., Block No.7, Shakti Bhawan, Rampur Jabalpur Through: its Managing Director
2. Chief General Manager (H.R.&A) Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd., Block No.7, Shakti Bhawan, Rampur Jabalpur.

.....Appellants/Employer

(By Shri Prashant Singh, Advocate General with Shri Anoop Nair, Advocate)

AND

1. K.K. Mishra, S/o. Late Shri Vijay Shankar Mishra, aged about 59 years, Occupation- Junior Engineer, (Civil) posted at present office of

Junior Engineer (Job
Training) Kuchwahi,
M.P.P.K.V.V. Co. Ltd. Sidhi
M.P.

2. State of Madhya Pradesh
Through its Principal
Secretary Energy Department,
Vallabh Bhawan, Bhopal.

.....**Respondents/Employees**

(By Ms. Shobha Menon, Senior Counsel with Ms. Aanchal Saraf
and Shri D.K.Tripathi, Advocate)

WRIT APPEAL No.75/2022

BETWEEN :-

1. MP Poorv Kshetra Vidyut
Vitaran Company Ltd.
(MPPKVVCL), Through: its
Managing Director, Block
No.7, Shakti Bhawan, P.O.
Vidyut Nagar, Rampur
Jabalpur (M.P.)-482008.
2. MP Poorv Kshetra Vidyut
Vitaran Company Ltd.
(MPPKVVCL), Through: its
Chief General Manager
(Human Resource &
Administration) Block No.7,
Shakti Bhawan, P.O. Vidyut
Nagar, Rampur Jabalpur
(M.P.)-482008

3. Chief General Manager
(Works) Inquiry Officer, MP
Purva Kshetra Vidyut Vitran
Company (MPPKVVCL)
Block No.7, Shakti Bhawan,
P.O. Vidyut Nagar, Rampur
Jabalpur (M.P.)-482008

.....Appellants/Employer

(By Shri Prashant Singh, Advocate General with Shri Anoop Nair,
Advocate)

AND

1. Shiv Kirti Shukla S/o Late
Shri Ram Yash Shukla Aged
about 56 years, Occupation:
Junior Engineer, Rural
Distribution Centre, Madhya
Pradesh Poorv Kshetra Vidyut
Vitaran Company Ltd., R/o
Nagod Town, Satna (MP)-
485446.

.....Respondent/Employees

(By Ms. Shobha Menon, Senior Counsel with Ms. Aanchal Saraf
and Shri D.K.Tripathi, Advocate)

WRIT APPEAL No.286/2022

BETWEEN :-

Amarjeet Kumar S/o Shri
Krishna Prasad Singh, aged
about-34 years Occupation-

Junior Engineer (Terminated)
from Distribution Center,
Narayangan, Distt. Mandla
M.P.

.....**Appellants/Employer**

(By Shri Prashant Singh, Advocate General with Shri Anoop Nair,
Advocate)

AND

1. State of M.P. Through its
Principal Secretary Energy
Department, Vallabh Bhawan
Bhopal M.P.
2. Madhya Pradesh Poorv
Kshetra Vidyut Vitran
Company Ltd. Block No. 7,
Shakti Bhawan, Rampur
Jabalpur - Through its
Managing Director.
3. Chief General Manager (H.R.
& A) Madhya Pradesh Poorv
Kshetriya Vidhyut Vitran
Company Ltd. Block No.7,
Shakti Bhawan Rampur,
Jabalpur-M.P.

.....**Respondents/Employees**

(By Ms. Shobha Menon, Senior Counsel with Ms. Aanchal Saraf
and Shri D.K.Tripathi, Advocate)

Whether approved for reporting	YES
Law Laid down :-	<p><u>M.P. Civil Services (Classification, Control and Appeal) Rules, 1966</u> – As adopted by employer – Issuance of charge-sheet – Rule 14 makes it obligatory for the disciplinary authority to draw up or cause to be drawn up the charge-sheet. In the instant case, the preliminary enquiry report was placed before the competent disciplinary authority namely Managing Director. The note-sheet nowhere shows that draft charge-sheet was prepared and placed for approval before Managing Director. In absence of any decision to initiate disciplinary proceedings and approval of charge-sheet by Managing Director, the charge-sheet is vitiated.</p> <p><u>Waiver</u> – The employee participated in the enquiry but did not raise objection regarding defect in the charge-sheet. Since, defect goes to the root of the matter and runs contrary to the statutory mandate ingrained in Rule 14 of CCA Rules, there cannot be any <i>estoppel</i> or <i>waiver</i> against the plea of incompetence of charge-sheet.</p> <p><u>The defective charge sheet</u> – When charge-sheet is not issued/approved by competent authority, it is</p>

fundamentally defective, not capable of being corrected retrospectively. Life cannot be breathed into the stillborn charge memorandum.

Disciplinary Proceedings – Initiation of disciplinary proceedings and approval of a charge-sheet are two distinct acts, each one requiring independent application of mind on the part of disciplinary authority.

Practice and procedure – Learned Single Judge in one case interfered with the charge-sheet and entire disciplinary proceedings whereas in another similar case, relegated the employee to approach the appellate authority. Similarly situated litigants deserve similar treatment, at least in the hands of the Court.

Electricity (Supply Act), 1948 – Executive instructions dated 23.09.1964 and 23.02.1972 – These executive instructions must be read in the backdrop of enabling provisions namely Section 13 of the Act which talks about authentication of *orders* and *decisions* of the Board. It has no thread relation with issuance of a charge-sheet under the CCA Rules.

Writ Appeal – If learned Single Judge has taken a plausible view, no interference is warranted by the Division Bench.

O R D E R (Oral)

Sujoy Paul, J.:-

On the joint request, matters were analogously heard and decided by this common order passed. These intra-court appeals take exception to the orders passed by the learned Single Judge. Since, question of law involved in all these matters is similar, on the joint request of the parties, the matters were analogously heard and decided by this common order.

W.A. No. 75/2022

2. In this writ appeal, the employer assailed the order passed by learned Single Judge in W.P. No. 24414/2021 decided on 06.01.2022. The singular legal issue raised for determination was *whether the charge-sheet dated 21.01.2020 Annexure P/13 and supplementary charge-sheet dated 15.05.2020 Annexure P/19 were issued by the competent disciplinary authority namely Managing Director.*

3. Shri Prashant Singh, learned senior counsel at the outset fairly submitted that it is not in dispute that Managing Director is the disciplinary authority as per the relevant schedule of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (in short 'CCA Rules') which were adopted by the appellant/employer.

4. Learned senior counsel submits that no doubt in other cases, the interference was made by learned Single Judge on the charge-sheet because it was not approved by the Managing Director but in the instant case, the charge-sheet was duly approved by the said competent disciplinary authority. It is submitted that in **W.P. No. 14649/2021 (Tarun Kumar Mishra Vs. State of M.P.)** (Annexure A-3) decided on 21.10.2021, the charge-sheet and disciplinary enquiry founded upon it was interfered with because there was no approval of the charge-sheet by the Managing Director and it was signed by the Chief General Manager. Indisputably, writ appeal filed against the order in Tarun Kumar Mishra (supra) was withdrawn and the fact remains that instant note-sheet (Page-19) shows that the draft charge-sheet was in-fact approved.

5. Learned senior counsel strenuously contended that the para- 3, 4 and 5 of note-sheet is to be read conjointly. Para-3 of note-sheet shows that the fact finding enquiry report is produced and it is opined that a charge-sheet can be issued and a departmental enquiry can be instituted. Para-4 of note-sheet shows that the case was placed before the Competent Authority for perusal and for passing necessary orders. A conjoint reading of para- 3, 4 and 5 shows that after perusal of the entire record, which contains the draft charge-sheet as well, the competent authority has given

the approval. Thus, the present case is different than other cases which were allowed and in which there existed no approval of the disciplinary authority to the charge-sheet.

6. Learned senior counsel for the employer further submits that after receiving the charge-sheet and during the entire enquiry proceedings, the respondent-employee did not raise any objection about validity of charge-sheet. He after suffering the punishment and without preferring an appeal for the first time, raised the question of competence of authority in issuing the impugned charge-sheet.

7. Shri Prashant Singh, learned senior counsel further submits that the order of erstwhile Madhya Pradesh Electricity Board dated 23rd September 1964 and 23rd February 1973 (Annexure R/1-A and R/2) shows that there exist a delegation of power to the Additional Secretary (re-designated as Chief General Manager) to execute the instruments as mentioned in the said order. The notification dated 18/08/2012 (Annexure R/4) is relied upon to contend that the previous decisions of erstwhile MPEB will remain in force. The document dated 20/09/2013 (Annexure R/5) is referred to show that erstwhile Additional Secretary was renamed as Chief General Manager (HR & Admn.). This shows there exists a delegation of power to Chief General Manager pursuant to which he has rightly issued and signed the charge-sheet.

8. *Per-contra*, Mrs. Shobha Menon, learned senior counsel supported the impugned order of learned Single Judge and placed reliance on the same note-sheet to contend that there exists no approval of the draft charge-sheet by the competent authority namely Managing Director. She placed reliance on Rule 14(2) and Rule 14(3) of the CCA Rules to show that charge-sheet is required to be approved by the Disciplinary Authority. By taking this Court to the pleadings of writ petition, it is argued that there was no dispute that the Disciplinary Authority was the Managing

Director and charge-sheet is not signed by him, indeed, it is signed by the Chief General Manager.

9. The judgment of Supreme Court in **Civil Appeal No.8427-8428 of 2018 [State of Tamil Nadu Rep. By Secretary to Govt. (Home) vs. Promod Kumar IPS & another]** decided on August 21, 2018 is relied upon wherein the *ratio decidendi* of previous judgment of Supreme Court in **Union of India and Ors. vs. B.V. Gopinath, 2014 (1) SCC 351** was relied upon. It is submitted that if the very foundation namely charge-sheet is defective, the entire building of disciplinary proceedings standing on it, must collapse. If something is bad *ab initio*, it cannot get stamp of approval because of subsequent fair proceedings.

10. Shri D.K.Tripathi, learned counsel for respondent while arguing **W.A. No.286/2022** submits that his case is identical to that of W.A. No.75/2022 or in other words, W.P. No.24414/2021. The note-sheet is identical and similarly worded. Yet the learned Single Judge did not follow the principle laid down in **T.K. Mishra and K.K. Mishra (supra)** and took a different view by sending the appellant/employee to the Appellate Authority. Since, two similarly situated employees were given different treatment by the same Bench, the interference may be made.

11. Shri Prashant Singh, learned senior counsel in his submissions placed reliance on I.A. No.4403/2022 filed in W.A. No.75/2022. An

undated covering letter is referred, on the forehead of which a date i.e. 01/01/2020 is mentioned. Learned senior counsel submits that it contains signature of General Manager (Admn.) and other officers but not the Managing Director. If this document is read along with the note-sheet, it will be crystal clear that on 01/01/2020, the Managing Director has put his signature. Thus, it shows that Managing Director has in fact approved the draft charge-sheet. In other words, a conjoint reading of the covering letter aforesaid and the note-sheet leads to the only conclusion that the draft charge-sheet was placed for consideration before the Managing Director and he duly approved it by putting his signature.

- 12.** No other point is pressed by the learned counsel for the parties.
- 13.** We have heard the parties at length and perused the record.
- 14.** As noticed above, it is not in dispute that the competent authority for the purpose of the issuance of charge-sheet in the instance is the Managing Director. It is equally not in dispute that the charge-sheet is not signed by the Managing Director, indeed, it is signed by the Chief General Manager. The only question which needs determination is whether the Managing Director has signed the relevant note-sheet which shows that draft charge-sheet or proforma of charge-sheet was placed before him for consideration and he has approved it ?

15. For this purpose it is apposite to reproduce the note sheet :

“विषय— मण्डला जिले में सौभाग्य योजनांतर्गत विद्युतिकरण कार्य में अनियमितता— संबंधितों के विरुद्ध अनुशासनात्मक कार्यवाही।

03. उपरोक्त कंडिकाओं में वर्णित परिस्थितियों के दृष्टिगत चूकि प्रकरण गंभीर वित्तीय अनियमितताओं से संबंधित है एवं जाँच प्रतिवेदनानुसार संबंधितों द्वारा बरती गयी अनियमितताओं के परिपंक्ष्य में वसूली योग्य राशि कारण बताओं सूचना पत्र में प्रस्तावित की गयी है। अतः तालिका में दर्शित अधिकारियों/कर्मचारियों के विरुद्ध आरोप पत्र जारी कर विभागीय जाँच प्रस्तावित की जा सकती है।

04. प्रकरण अवलोकनार्थ एवं आदेशार्थ प्रस्तुत है।

महाप्रबंधक (प्रशा.)

प्रबंधक

(प्रशासन)

मुख्य महाप्रबंधक (मा.सं.एवं प्रशा.)

प्रबंध संचालक

CGM(HR&A)

05. कंडिका क्रमांक 03/एन के अनुमोदनोपरांत कंडिका क्रमांक 01/एन में दर्शित अधिकारियों/ कर्मचारियों के विरुद्ध जारी किये जाने वाले आरोप पत्र की स्वच्छ टंकित प्रतियां हस्ताक्षरार्थ प्रस्तुत है।

महाप्रबंधक (प्रशा.)

प्रबंधक

(प्रशासन)

मुख्य महाप्रबंधक (मा.सं.एवं प्रशा.)”

(Emphasis supplied)

16. A plain reading of note-sheet (Annexure A/1) shows that three members Committee was constituted to conduct a fact finding/preliminary inquiry. The Committee opined that the delinquent employees committed serious financial irregularities. Thus, in para-3 of the said note-sheet, it is mentioned that preliminary enquiry report is produced and departmental enquiry can be initiated against him by issuing the charge-sheet. Thereafter, in para-4, it is mentioned that the case is placed for consideration and for passing necessary orders. After para-4, the Managing Director, Chief General Manager and Manager Administration have put their signatures. In para-5, it is mentioned that after ‘approving’ the contents of para-3, the charge-sheet proposed to be issued is placed for consideration before the authority. In support of para-5, Managing Director admittedly did not put his signature. The main argument of Shri Prashant Singh, learned Senior counsel was that para-3, 4, and 5 are required to be read with covering letter of the charge-sheet filed with I.A. No.4403/2022. He argued that the words “प्रकरण अवलोकनार्थ एवं आदेशार्थ” with another word used in para-5 “अनुमोदनोपरान्त” have great significance and are required to be read together.

17. The argument on the first blush appears to be attractive but lost much of its shine when examined minutely.

18. It is settled in service jurisprudence that preliminary enquiry/ fact finding inquiry is being conducted to *prima-facie* examine whether there exists any material which requires the disciplinary authority to proceed against the delinquent employee. The preliminary enquiry officer is under no obligation to take a decision whether a regular enquiry is to be conducted or not. The preliminary enquiry committee/ authority at best can recommend for conducting the enquiry and submit its preliminary enquiry report before the competent authority. The record/note-sheet shows that he did the same thing which is evident from para-3 of the note-sheet. This para nowhere shows that any draft charge-sheet was prepared by any of the authority. In other words, while giving a finding “प्रकरण अवलोकनार्थ एवं आदेशार्थ” does not mean that a draft charge-sheet was also part of the record which was considered by the disciplinary authority. Putting it differently, till the stage of note para 4, there was neither any occasion for preliminary enquiring authority to prepare the draft charge-sheet nor up to that stage, any decision was taken to conduct a regular departmental enquiry.

19. Pausing here for a moment, a Single Bench in the case of **T.K. Mishra (W.P. No.14649/2021)** Annexure A/3 set aside the charge-sheet because it was not approved by the Competent Authority. If that note-sheet in the case of **T.K. Mishra (supra)** is examined, it shows that in that case, a formal decision was taken to initiate the departmental enquiry against T. K. Mishra whereas the present note-sheet (page-19) shows that no such formal decision was even taken to initiate a disciplinary proceeding.

20. We are unable to persuade ourselves (in the manner note-sheet is drafted) with the argument of learned counsel for the employer. There exists nothing in the said note-sheet which suggests that a conscious decision was taken by the Managing Director/ Disciplinary Authority by approving the draft of the charge-sheet. The microscopic reading of this note-sheet leads to the conclusion that no such draft charge-sheet was kept for approval before the Managing Director and in turn, he approved it. We are also unable to read the document filed with the I.A. in the manner canvassed which contains the same date i.e. 01.01.2020 which is the date on which Managing Director signed the note-sheet. There is no presumption that if the said document filed with I.A. No.4403/2022 contains the same date i.e. 01.01.2020 which tallies with the date below

the signature of Managing Director in the note-sheet that the draft charge-sheet was placed before him for consideration and he has approved it.

21. Pertinently, the similar issue when raised in the case of **T.K. Mishra (supra)** was decided in favour of the employee. The writ appeal was filed by the employer but was withdrawn. The learned Single Judge has given liberty to issue the charge-sheet by the competent authority.

22. As per Rule 14 of the CCA Rules, the charge-sheet has to be issued or caused to be issued by the disciplinary authority. This aspect was considered by the Supreme Court in the case of **B.V. Gopinath (supra)**. The relevant portion reads 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.** 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]

23. The *ratio decidendi* of **B.V. Gopinath (supra)** is followed in **Pramod Kumar I.P.S. (supra)**. In **Pramod Kumar (supra)** the Apex Court opined as under :-

18. Rule 8 (4) of the All India Service (Discipline and Appeal) Rules, 1969 also mandates that the disciplinary authority shall “draw up or cause to be drawn up” the charge memo. We see no reason to take a view different from the one taken by this Court in **B.V.Gopinath (supra)**. We also see no substance in the submission made by the Senior Counsel for the State that the said judgment needs reconsideration. Assuming that Mr.Giri is right in his submission that the initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 which provides for the charge memo to be drawn by the disciplinary authority cannot be ignored. We reject the submission on behalf of the Appellant that Gopinath’s case can be distinguished on facts. We are not in agreement with the contention of the Appellant that the business rules and standing orders of the State of Tamil Nadu are quite different from the office orders and circulars issued by Union of India which formed the basis of the judgment in Gopinath’s

case. A close reading of the said judgment would disclose that reliance on the office note was only in addition to the interpretation of the Rule”.

[Emphasis supplied]

24. It was further held that sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the Disciplinary Authority at both stages – for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the even the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. **In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the Disciplinary Authority.** If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the Disciplinary Authority, the same would not get cured by the fact that such approval was there at the initial stage.

25. A plain reading of this para shows that it contains the answer of second limb of argument of learned senior counsel for the employer. If no eyebrows were raised on the validity of charge-sheet during the enquiry, that will not validate the departmental enquiry or a defective charge-sheet. If departmental enquiry is bad in law since inception because of a defective charge-sheet, the entire edifice founded upon it needs to be axed.

26. So far as the executive instructions dated 23rd September, 1964 and 23rd February, 1972 on which reliance is placed by Shri Prashant Singh, learned Advocate General are concerned, suffice it to say that same are issued in pursuance of and in furtherance of Section 13 of the **Electricity (Supply) Act, 1948**. Section 13, in no uncertain terms makes it clear that it talks about authentication of orders and decisions of the Board. It has no nexus and even a thread relation with issuance of a charge-sheet under the CCA Rules. Thus, this argument regarding delegation of power deserves rejection.

27. So far as W.A. No. 286/2022 is concerned, Shri Anoop Nair, learned counsel for the employer did not dispute that this matter is similar to W.A. No.75/2022. The note-sheet in both the cases are identically worded. In this view of the matter, we find substance in the argument of

Shri D.K. Tripathi, Advocate that similarly situated delinquent employees are entitled to get similar treatment, at least in the hands of the Court.

28. In this view of the matter, we find no illegality or irregularity in the order passed by learned Single Judge in W.P. No.24414/2021 and W.P. No.24471/2021. The learned Single Judge has taken a plausible view which does not warrant interference by this Court.

29. The Learned Single Judge has erred in relegating the petitioner of W.P. No.25246/2021 to the appellate authority and to this extent, this order deserves interference.

30. Resultantly, Writ Appeal Nos.72/2022 and 75/2022 are dismissed. W.A. No.286/2022 is allowed. The impugned charge-sheet and subsequent disciplinary proceedings in the said case are set aside. Liberty is reserved to the competent disciplinary authority to proceed against the delinquent employees in accordance with law.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE