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WP-1703-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 1703 of 2021*S.R. KOLI**Versus**M.P. KHADI TATHA AND OTHERS*

.....
Appearance:

Shri K.C. Ghildiyal-Senior Advocate with Shri Aditya Veer Singh- Advocate for the petitioners.

Shri Hare Krishna Upadhyay- Advocate for the respondents.
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ORDER

(Reserved on : 23/07/2025)
(Pronounced on : 29/08/2025)

By way of this petition, the petitioner has challenged the order dated 08.01.2021 (Annexure P/10) whereby the petitioner has been inflicted with penalty of termination from services with recovery of loss caused to the employer to the tune of Rs. 168.05 lacs.

2. It is contended by learned senior counsel for the petitioner submits that initially a charge sheet was issued to the petitioner on 03.02.2020 by the Managing Director and being dissatisfied with the reply, the Managing Director appointed Inquiry Officer and Presenting Officer vide order Annexure P/4 dated 04.06.2020. However, in the intervening period, the petitioner was compulsorily retired from service vide order dated 15.12.2020 after obtaining approval of the State Government. This was stated to be in public interest and by declaring the petitioner as dead wood. However, despite his retirement when the departmental enquiry was finalized, the final



order Annexure P/10 has been passed by the Managing Director vide Annexure P-10 by which not only the petitioner has been dismissed from service after retirement and recording a finding that the petitioner has caused defalcation and loss to the extent of Rs. 118.05 lacs, the Managing Director has been authorized to initiate separate proceedings for recovery. It is the case of the petitioner that the compulsory retirement was approved by the State Government and while approving the said order Annexure P/10 the Board of Directors took a decision to withdraw the compulsory retirement earlier granted to the petitioner. This was vide meeting dated 06.01.2021 which was followed by consequential penalty order Annexure P/10. The Board could not have taken a decision, overturning such decision that was earlier approved by the State Government.

3. Learned senior counsel further submits that on 24.05.2024, this Court has passed detailed order mentioning the objection of the petitioner regarding lack of approval or withdrawal of compulsory retirement once the compulsory retirement with approval of the State Government.

4. Learned senior counsel submits that the charge-sheet and consequential order are both without jurisdiction because as per Rule 7 of the M.P. Gramudyog Mandal Seva Bharti Niyam 1978 (for short, "Rules 1978") which is on record as Annexure P/1, the powers of Board of Directors has been delegated to the Managing Director for appointment and discipline of Class-II, Class-III & Class-IV employees only and the petitioner is a Class-I employee as is evident from schedule I of the said Rules as amended vide notification dated 23.11.1995 available at page 28 of the writ



petition. Therefore, it is contended that the charge sheet and consequential order of penalty are both without jurisdiction.

5. Learned counsel for the respondents per contra has argued that the Board of Directors of the Board vide proceedings dated 09.02.1998 (Annexure R/1) has resolved in agenda item No. 16 thereof that all the administrative powers of controlling authority of class-I officer be delegated to Managing Director. Therefore, it is argued that the Managing Director is the disciplinary authority. It is further argued that the charge sheet was though issued by Managing Director but even if the arguments of the petitioner that delegating powers on authority as controlling officer does not amount to conferment of powers of disciplinary authority is accepted, even then the Board has made over specific delegation in the case of present petitioner vide agenda no. 15 meeting dated 14.01.2020 by permitting the Managing Director that in relation to the financial lapses of the petitioner, the departmental enquiry be conducted by the Managing Director. It is in pursuance to the said decision taken by the Board of Directors and authority given by the Board of Directors that the charge-sheet was issued by the Managing Director. Therefore, the judgment passed in W.P. No. 14498/2016 relied by learned senior counsel for the petitioner fades into insignificance. It is further argued that even for the sake of arguments, if it is held that the charge-sheet was issued by incompetent authority i.e. Managing Director then once the penalty order has been approved by full Board in its meeting dated 06.01.2021, then whatever defect was there in the charge-sheet gets wiped off by the subsequent approval of the Board. It is further contended



that the petitioner cannot have best of all the things and get dual benefits whereby firstly the compulsory retirement order has been withdrawn and then he is challenging the dismissal order. The petitioner was guilty of major misconduct which was found proved in the departmental enquiry and therefore, there has been awarded a penalty of dismissal from service which is proper.

6. The respondents have also brought on record the order dated 11.11.2024 along with I.A. No. 22725/2024 whereby the State Government has permitted withdrawal of the compulsory retirement order.

7. In rejoinder submissions, learned counsel for the petitioner has vehemently relied on judgment in the case of petitioner itself in W.P. 14498/2016 to submit that the power of controlling authority does not extend to power of disciplinary authority and controlling authority only exercises the routine administrative matters like posting, work allotment, writing ACR, etc. and it cannot be inferred to have authorized the controlling authority to exercise the disciplinary powers and dismiss the employee from service. It is further argued that if the initial charge-sheet is bad in law, then subsequent authorization of penalty order would not cure the defect.

8. It is further argued by learned senior counsel for the petitioner that as per the proceedings Annexure R/2 the Managing Director has been authorized to carry out the Departmental enquiry against the petitioner and not to act as disciplinary authority and therefore the Managing Director could only have carried out departmental enquiry against the petitioner which he has done but he could not have acted as disciplinary authority of the



petitioner in terms of the agenda No. 15.

9. Heard.

10. The petitioner was charge-sheeted with defalcation of huge sum of money to the tune of Rs. 1.18 crore in District Shahdol that was meant for beneficiaries of various schemes run by the respondent Board. The petitioner being Deputy Director, was posted as head of District Office of the respondents at Shahdol when the lapses took place.

11. Firstly, the issue that once compulsory retirement had been approved by the State Government, whether the Board of the respondents could have revoked it, is taken up.

12. No doubt, it is true that the State Government had approved the compulsory retirement of the petitioner vide Annexure P-7, but no statutory provision or any executive instruction to fill up the vacuum of statutory rules has been brought on record to indicate that only the State is empowered to compulsorily retire an officer of the respondent, which is a Board, though an Enterprise of the State Government, but owing its existence under the M.P. Khadi Tatha Gramodyog Adhiniyam, 1978 and a body incorporated under the said Act. No provision under the Adhiniyam 1978 or the Rules 1978 has been commended to attention of this Court, whereby the State retains the ultimate power to approve or concur with the matters of compulsory retirement. Therefore, it appears that the earlier act of taking concurrence/approval of the State was some superfluous action by the Board, and does not create a vested right in the petitioner to say that for rescinding



the said order, approval/concurrence of the State was mandatory.

13. Now even that issue is insignificant because vide order dated 11.11.2024 filed along with I.A. No. 22725/2024, the State Government has permitted withdrawal of the compulsory retirement order. Therefore, the issue of concurrence of the State goes away.

14. The petitioner was compulsorily retired as dead-wood while the Departmental enquiry was pending. This was not by way as penalty, but by declaring him as dead-wood. Retirement as dead wood is not a penalty, and depends on the overall performance of the employee, that whether he is still useful to the organization, or has turned to dead-wood.

15. So far as the issue that the Managing Director could not have issued the penalty order is concerned, as per section-22 of the Adhiniyam of 1978, the Board may delegate any of its powers, except Regulation framing power under section-29, to certain specified officers, that includes the Managing Director.

16. No specific provision has been made in the Act of 1978 or the Rules of 1978, vesting powers of appointing authority or disciplinary authority on any other officer. Therefore, these powers will vest in the Board only, unless delegated as per Section-22.

17. As per Clause-7 of the Rules 1978, the Managing Director has been given the powers of appointing and disciplinary authority only for Class-II, III and IV officers. The petitioner was admittedly a Class-I officer, hence, as per the Rules of 1978, powers are retained with the Board.



18. So far as reliance on resolution No. 16 of the Board meeting dated 09.2.1998 is concerned, the said resolution (Annexure R-1) only vests full administrative powers for exercising “control” over the Class-I employees. The question that whether “controlling authority” will include “disciplinary authority” does not really arise in this case. This is because there is no specific rule brought to notice of this Court, which mandates that the charge-sheet shall be issued only by the Disciplinary Authority, or by the Board. In absence of any such provision, even the controlling authority is competent to issue charge-sheet, as any superior authority, who is Controlling Authority, can issue the charge-sheet in view of *P.V. Srinivasa Sastry v. Comptroller and Auditor General*, (1993) 1 SCC 419, wherein the Hon’ble Apex Court held as under :-

4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State “shall be dismissed or removed by an authority subordinate to that by which he was appointed”. Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. 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. 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 holder of a civil post. But in absence of any such rule, this right or



guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

(Emphasis supplied)

19. Therefore, there is no defect of competence in issuing the charge-sheet. So far as conducting enquiry by appointing enquiry and presenting officers is concerned, vide agenda item No. 15 of Annexure R-2, the Managing Director was authorized by the Board to conduct enquiry. Therefore, the appointment of Enquiry and Presenting Officer by the Managing Director was also a duly authorized act on his part.

20. Even if the Managing Director had absolutely no authority to issue the charge-sheet, even then if the final order is issued by the competent authority, then it is not a defect at all. It is settled in law that even if the charge sheet is issued by the authority having no competence or there is defect in competence of the charge sheeting authority then if the order is passed by the competent authority then the defect of jurisdiction in the charge sheeting authority would be of no consequence. Very recently, in *State of Jharkhand Vs. Rukma Kesh Mishra, 2025 SCC Online SC 676*, the Hon'ble Supreme Court has held as under :-

“20. It would, therefore, be profitable to note what is the law declared by this Court



on the point as to who can issue the charge-sheet.

21. As far back as in 1970, this Court in *State of Madhya Pradesh v. Shardul Singh*¹⁴ held that Article 311(1) does not in terms require that the authority empowered by that provision to dismiss or remove an officer should initiate or conduct the inquiry. This decision could count as the parent decision on the topic, declaring the law in paragraphs '6' and '10'. The said paragraphs are quoted below for ease of understanding as to how Article 311(1) was construed:

"6. Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or holds civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. But it is said on behalf of the respondent that that guarantee includes within itself the guarantee that the relevant disciplinary inquiry should be initiated and conducted by the authorities mentioned in the Article. The High Court has accepted this contention. We have now to see whether the view taken by the High Court is correct.

10. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants. Hence we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article".

(emphasis supplied)

22. Then came the decision in *P.V. Srinivasa Sastry v. Comptroller and Auditor General*¹⁵, where this Court reiterated that a departmental proceeding need not be initiated only by the appointing authority and that initiation by a subordinate authority, in the absence of rules, is not vitiated. We consider it appropriate to extract paragraph '4' hereunder:

"4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages : the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. 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. 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 holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding”.

(emphasis supplied)

23. Yet again, in *Transport Commissioner v. A. Radhakrishna Moorthy* ¹⁶, this Court clearly declared the law as follows:

“8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal”.

(emphasis supplied)

24. All these decisions were considered by this Court in *Inspector General of Police v. Thavasippan* ¹⁷, and it was ruled as follows:

“9. ... Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal”. ...

(emphasis supplied)

25. Later decisions of this Court in *Government of Tamil Nadu v. S. Vel Raj* ¹⁸ and *Commissioner of Police v. Jayasurian* ¹⁹ also declare the law in the same vein, albeit in respect of different discipline and appeal rules, that a charge-sheet need not be issued by the appointing authority; any other authority, who is the controlling authority, can initiate departmental proceedings by issuing a chargesheet.

26. At this stage, we are reminded of the Latin phrase *stare decisis et non queta movere* meaning, stand by what has been decided and do not disturb what has been settled. While it is true that courts are not restrained by any principle of law from expressing a different view on a point of law or to distinguish precedents (a topic we wish to advert to briefly a little later), *stare decisis* need not be disregarded to unsettle settled positions. We would read these precedents (referred to in paragraphs 21 to 25, *supra*) as settling the law that unless the relevant discipline and appeal rules applicable to an officer/employee of an authority within the meaning of Article 12 of the Constitution so require, disciplinary proceedings by issuance of a charge-sheet cannot be faulted solely on the ground that either the Appointing Authority or the Disciplinary Authority has not



issued the same or approved it. These precedents have stood the test of time and having full application to the case at hand, could not have been lightly overlooked. A holistic consideration of all these precedents by the High Court was certainly the need of the hour. Thavasippan (supra) had considered the precedents in Shardul Singh (supra), P.V. Srinivasa Sastry (supra) and A. Radhakrishna Moorthy (supra) and P.V. Srinivasa Sastry (supra) was placed before the coordinate Bench in B.V. Gopinath (supra). We are anchored in a belief that had the High Court looked into these precedents, the conclusion would have certainly been otherwise.”

21. So far as the issuance of penalty order is concerned, it has been issued by the Managing Director as per the decision of the Board itself. The detailed resolution of the Board has been placed on record as Annexure R-5, whereby the Board has duly taken a detailed and reasoned decision to issue the impugned penalty order. Only the consequential act of signing and issuing the communication has been done by the Managing Director. It has been held by the Hon’ble Apex Court in the case of *Union of India v. P.K. Roy, 1967 SCC OnLine SC 23 : AIR 1968 SC 850*, that if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. The Hon’ble Apex Court held as under :-

“11. In our opinion, the procedure adopted in this case does not contravene the provisions of Section 115(5) of the said Act, because it was the Central Government which laid down the principles for integration, it was the Central Government which considered the representations and passed final orders, and both the preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government. It is manifest that there has been no delegation by the Central Government of any of its essential functions entrusted to it under the statute. It was pointed out by Mr Asoke Sen that in its letter



dated April 3, 1957 the Central Government had intimated that the work of integration should be left to the State Government. But what was meant by that letter was that only the preliminary work of preparation of the gradation lists on the principles decided upon by the Central Government should be left to the State Governments concerned. It is clear that such work cannot be done by the Central Government itself since the necessary information regarding the officers can be obtained and tabulated only by the States concerned. It was also pointed out by Mr Asoke Sen that the preparation of the provisional and the final gradation lists by State Government constituted a delegation by the Central Government. We do not think there is any substance in this argument. It is not disputed that the provisional and the final gradation lists were prepared by the State Government on the principles laid down by the Central Government itself subject to one change in the matter of determining seniority and the provisional gradation list was sent for approval of the Central Government together with representations made by the officers concerned for being dealt with and decided upon by the Central Government. The principle of the maxim “delegates non protest delegare” has therefore no application to the present case. The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is in the eye of law no “delegation” at all and the maxim “delegatus non potest delegare” does not apply [See Fowler (John) & Co. (Leeds) v. Duncan [[1941] Ch 450]]. In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. In the context of the facts found in the present case we are of opinion that the High Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final



gradation list dated April 6, 1962 was therefore ultra vires and illegal. Even on the assumption that the task of integration was exclusively entrusted to the Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in Sections 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter of effecting the integration of the services. So long as the act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter it cannot be held that there has been any violation of the principle “delegatus non potest delegare”. For instance,”

22. In view of the above, it is held that neither the issuance of charge-sheet and consequential penalty order was an unauthorised or incompetent act devoid of jurisdiction, nor the withdrawal of compulsory retirement suffered from any vice of jurisdiction.

23. Consequently, the petition fails and is **dismissed**.

(VIVEK JAIN)
JUDGE

MISHRA