



CWP-8815-2025

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-8815-2025

Date of Decision: 22.04.2025

Deepak Khator

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. B.S. Rathee, Advocate and
Mr. Vijayveer Singh, Advocate for the petitioner
Ms. Rajni Gupta, Additional Advocate General, Haryana
Mr. Amit Khatkar, Advocate for respondent Nos.2 to 4

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:

- i. order dated 19.03.2025 (Annexure P-32) whereby respondent No.1 has rejected his revision; and
- ii. memo of charges dated 24.10.2024 (Annexure P-9) issued by respondent No.4

The petitioner is further seeking stay of operation of impugned orders dated 19.03.2025 and 24.10.2024.

2. The petitioner was appointed as Chief Accounts Officer with Shahabad Co-operative Sugar Mills Limited (for short 'sugar mill') vide communication dated 28.08.2015 (Annexure P-1). His interview was



conducted by Board of Directors of the sugar mill. It is apt to notice here that respondent is a cooperative sugar mill and its activities are governed by Board of Directors of sugar mill. There is a Managing Director appointed by the Board of Directors with the consent of State Government. The appointment letter dated 28.08.2015 was issued under the signatures of Managing Director, however, appointment was made by Board of Directors. The Managing Director served upon the petitioner memorandum dated 24.10.2024 (Annexure P-9) alleging misconduct. The said memorandum was followed by statement of allegations and statement of charges. Feeling aggrieved from the aforesaid memorandum, the petitioner preferred revision before the State Government which came to be dismissed by impugned order dated 19.03.2025 (Annexure P-32) passed by Special Secretary to Government, Haryana, Cooperation Department, Chandigarh.

3. Mr. Vijay Kumar Jindal, Senior Advocate submits that it is undisputed that Appointing Authority of the petitioner was Board of Directors. Appointing authority is Disciplinary Authority. The impugned memorandum was issued by Managing Director who was not Appointing Authority, thus, it was bad in the eye of law. Bye-laws of a Cooperative Sugar Factory (Annexure P-29) (for short '**Bye-laws**') as well as Service Rules for the Employees of the Cooperative Sugar Mills in the State of Haryana (Annexure P-31) (for short '**Service Rules**') governing service of the petitioner clearly provide that 'appointing authority' means the authority in which particular category vests. 'Competent authority' means the authority in which the powers by the appointing authority have been delegated for accomplishment of certain purposes. As per Bye-laws, Board consists of 16 Directors. Managing Director is one of the members of Board



of Directors. The Board of Directors has power to constitute Executive Committee. Managing Director is *ex-officio* member convenor. It is the Executive Committee which has power to appoint, suspend or dismiss the employee. The power of Managing Director to make appointment is confined to grade salary upto ₹200/-. The petitioner was appointed on a higher post with higher remuneration, thus, for all intent and purposes Board of Directors was his Appointing and Disciplinary Authority. Rule 27 of Service Rules provides that Managing Director/Board of Directors of the Society will be Punishing Authority as per Bye-laws of the Society. As Board of Directors was Appointing and Punishing Authority, the impugned memorandum could not be issued by Managing Director. It is settled proposition of law that memorandum can be issued by Disciplinary Authority.

4. In support of his arguments, Mr. Vijay Kumar Jindal, Senior Advocate relies upon judgments of Supreme Court in ***Union of India and others v. B.V. Gopinath, (2014) 1 SCC 351*** and ***Sunny Abraham v. Union of India and another, (2021) 20 SCC 12***. Supreme Court in afore-cited judgments has clearly held that memorandum/charge-sheet issued by any authority other than Disciplinary Authority is *non-est* in the eye of law. The proceedings may be set aside even after its conclusion.

5. *Per contra*, Mr. Amit Khatkar, Advocate submits that impugned memorandum was issued by Managing Director in terms of Rule 26 of Service Rules. Power to dismiss cannot be confused with power to initiate departmental proceedings. Both powers are independent. It is true that punishment can be awarded by Disciplinary Authority, however, proceedings by way of issuing memorandum can be initiated by an authority



other than Disciplinary Authority. As per Rule 26 of Service Rules, Managing Director is quite competent to serve charge-sheet and thereafter make appointment of Inquiry Officer. A two Judge Bench of Supreme Court in *State of Jharkhand v. Rukma Kesh Mishra, 2025 SCC OnLine SC 676* has clearly held that judgment in *B.V. Gopinath (supra)* and *State of Tamil Nadu v. Promod Kumar, IPS and another, (2018) 17 SCC 677* cannot be mechanically followed. The Court has clearly held that in the absence of specific Rule, charge-sheet may be issued by an authority other than Appointing Authority.

6. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

7. The conceded position emerging from the record is that the petitioner was subjected to interview by Board of Directors. He was getting salary more than ₹200/- per month. The appointment letter was issued by the Managing Director. The Board of Directors was Appointing as well as Disciplinary Authority. The Managing Director is part of Board of Directors as well as Executive Committee, however, he is neither Appointing nor Disciplinary Authority of Chief Accounts Officer i.e. petitioner. The Managing Director has issued memorandum, however, no order *qua* punishment has been passed.

8. The service of the petitioner is governed by Bye-laws of the Society as well as Service Rules. Rules 26 and 27 of the Service Rules are relevant for adjudication of the instant petition. For ready reference, the same are reproduced as below:



“26. Enquiry into misconduct:

If any report or complaint verbal or written is received and if disclosed on the fact of it that the accusation made against an employee constitute a major misconduct and disciplinary action is contemplated, the employee shall be given a charge-sheet in writing. The employee so charge-sheeted shall be given atleast 48 hours to enable to him to prepare and submit his explanation. The employee may at the discretion of the Managing Director, be granted extension of time for submission of the explanation, if the employee refused to accept the charge-sheet, it shall be sent to him by registered post and simultaneously displayed on the Notice Board. The charge sheet so served will contain the statement of charge or charge setting out the alleged misconduct and also may contain suspension from duty. Where the employee who has been served with a charge sheet has denied or controverted the charges levelled against him, his explanation shall be considered. In case the Managing Director/Competent Authority is satisfied with the explanation submitted by the employee he shall be absolved of all the charge. Otherwise, the employee will be issued an enquiry notice containing the name of the Enquiry Officer, date, time and place where the enquiry shall be held.

The enquiry will be conducted by the Managing Director/Competent Authority. The Enquiry Officer will hold enquiry proceedings and employee will be given full and fair opportunity to defend himself or to present his case. In case, the employee fails to participate or present himself in the enquiry proceedings, the Enquiry Officer will be within his right to proceed ex-parte in the absence of the employee.

The Enquiry Officer after recording the evidence will submit his findings to the Managing Director. The Managing Director/Competent Authority will consider the examine all the records of the Enquiry will pass an order either of punishment or of withdrawing the charges as the case may be. The order of punishment shall be communicated to the concerned employee.



27. Punishing Authority:

The Managing Director/BOD of the society will be Punishing Authority as per the provision of bye-laws of the Society. If any minor punishment as mentioned in Rule (1) to (5) the punishing authority will be the MD.”

9. From the perusal of above quoted Rules, it is evident that Managing Director or Board of Directors will be Punishing Authority as per Bye-laws of the Society. The respondent has fairly conceded that Punishing Authority of the petitioner is Board of Directors. The dispute remains with respect to power to initiate proceedings. Rule 26 of Service Rules empowers Managing Director to initiate departmental proceedings for the accusation which constitute a major misconduct. He has power to grant extension of time for submission of explanation. He has power to absolve an employee from the charges.

10. As per judgments cited by Mr. Vijay Kumar Jindal, Senior Advocate, charge-sheet can be issued by Disciplinary Authority. In view of judgments cited by Mr. Jindal, the impugned memorandum is bad in the eye of law. Before applying aforesaid judgments, it is imperative to examine the Rules which were considered by the Supreme Court in afore-cited judgments. From the perusal of judgments, it is quite evident that judgment in ***B.V. Gopinath (supra)*** is based upon Rule 14(2) & (3) of Central Civil Services (CCA), Rules 1965 (for short ‘**1965 Rules**’). For ready reference, Rule 14(2) & (3) of 1965 Rules are reproduced as below:

“14. Procedure for imposing major penalties.

(1) XXXX XXXX XXXX XXXX

(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.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

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 imputations 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.”**

11. From the perusal of above quoted Rule, it is evident that power to initiate proceedings vests with Disciplinary Authority. There is specific Rule which provides for initiation of proceedings by Disciplinary Authority. Supreme Court in a recent judgment in ***Rukma Kesh Mishra (supra)*** has noticed its earlier judgments in ***B.V. Gopinath (supra)*** and ***Promod Kumar (supra)***. In ***Rukma Kesh Mishra (supra)***, the officer was issued charge-



sheet by Deputy Secretary to Government of Jharkhand. He was also placed under suspension. The charge-sheet was issued under Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930. The officer, after conclusion of inquiry, came to be dismissed from service by an order of Governor contained in memo issued by the Joint Secretary. The order of dismissal from service was challenged before the High Court on the ground that approval of Chief Minister being the competent authority was not obtained for issuing charge-sheet. The Division Bench upheld order of learned Single Judge in Intra-Court Appeal. The Supreme Court held that judgments in *B.V. Gopinath (supra)* and *Promod Kumar (supra)* are based upon applicable Rules. The Authorities are bound to consider applicable Rules. If the governing Rules are different from Rule 14 of 1965 Rules, reliance cannot be placed upon these judgments. The relevant extracts of the judgment are reproduced as below:

“18. Bare perusal of Rule 55 reveals that it does not expressly specify the authority, who is competent to issue the charge-sheet. On the contrary, the decisions of this Court in B.V. Gopinath (supra) and Promod Kumar (supra) dealt with different rules which expressly specified who could issue the charge-sheet. We have noted with some measure of disappointment that long-standing precedents of this Court, which did lend sustenance to the impugned charge-sheet, were neither placed before the Division Bench nor the Single Judge for consideration. This is one reason why we are persuaded to interfere.

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24. All these decisions were considered by this Court in Inspector General of Police v. Thavasippan, 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 and Commissioner of Police v. Jayasurian 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.*

XXXX XXXX XXXX XXXX

30. *Reverting to Rule 55 of the 1930 Rules, it is observed that the same did not specify any particular authority to be under an obligation to issue the charge-sheet against a civil servant. In such view of the matter and having regard to the law settled by this Court, it is axiomatic that any officer holding a rank subordinate to the respondent's appointing authority but superior in rank than the respondent could have issued the charge-sheet. Admittedly, the facts do reveal initiation of disciplinary proceedings against the respondent having the approval of the Chief Minister dated 21st March, 2014. The draft charge-sheet was part of the proposal dated 13th January, 2014. Once the draft charge-sheet was on record before the Chief Minister, approval of the proposal to initiate disciplinary proceedings should have been read as including the Chief Minister's assent not only to the draft charge-sheet, as drawn up, but also to the other proposals to*



suspend the respondent as well as appointment of an inquiry officer and presenting officer. In such circumstances, reference by the Division Bench to Rule 17(3) of the 2016 Rules appears to be wholly misplaced since the charge-sheet was not issued under such sub-Rule.”

12. The petitioner is governed by Rules which are different from 1965 Rules. Rule 26 of Service Rules provides for initiation of proceedings. It does not provide that departmental proceedings in the form of charge-sheet should be initiated by Board of Directors. It permits Managing Director to initiate proceedings. In ***Rukma Kesh Mishra (supra)***, the Supreme Court has categorically held that departmental proceedings can be initiated by an authority other than Disciplinary Authority if Rules do not specially require initiation of proceedings by Disciplinary Authority.

In the case in hand, there is no Rule which specifically provides that proceedings shall be initiated by Appointing/Punishing Authority whereas afore-quoted Rule 26 of Service Rules permits Managing Director to initiate proceedings. Thus, impugned memorandum has not been issued by Managing Director beyond his jurisdiction.

13. In the wake of above discussion and findings, this Court is of the considered opinion that there is no jurisdictional error in the impugned memorandum warranting interference of this Court. The instant petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.04.2025

Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No