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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010370372025**

\+ W.P.(C) 8206/2025, CM APPL. 35903/2025 & CM APPL. 35905/2025

NBCC INDIA LTD. & ANR. .....Petitioners
Through: Mr. Soumyajit Pani, Mr. Aishwary Bajpai and Mr. Varun, Advs

versus

NEELESH SHAH .....Respondent
Through: Mr. Manish Kaushik, Ms. Divyanshi Khemka, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% **01.09.2026**

C. HARI SHANKAR, J.

1. The respondent retired from the National Buildings Construction Corporation[1] as Director (Projects) on 31 May 2021. Prior to his retirement, disciplinary proceedings were instituted against him under Rule 8 of the NBCC (Discipline and Appeal) Rules, 1993[2]. Inquiry proceedings followed, culminating in the submission, by the Inquiry Officer[3], of his Inquiry Report on 22 April 2022.

2. On 26 September 2022, the respondent was visited with a

[1] "NBCC" hereinafter
[2] "NBCC Rules" hereinafter
[3] "IO" hereinafter

second memorandum, containing "supplementary articles of charges" against him. The opening paragraph of the said memorandum read thus:

"File No. C-14019/1/2020-0/0 US (AV-1)-UD
Government of India
Ministry of Housing & Urban Affairs
AV Unit

Nirman Bhawan, New Delhi-110011,
Dated the 26th September, 2022

MEMORANDUM

Shri Neelesh Shah, Ex-Director (Projects), NBCC (India) Ltd. is hereby informed that vide Memorandum dated 26-04-2021, an inquiry was proposed against him under Rule 8 of NBCC (Discipline & Appeal) Rules, 1993. A copy of the Memorandum dated 26-04-2021 is enclosed herewith. Further investigation in this case revealed certain other lapses on the part of Shri Neelesh Shah, on which an inquiry against him is also proposed to hold under Rule 8 of NBCC (Discipline & Appeal) Rules, 1993. The statement of Supplementary Article of Charges in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge Annexure-l. The statement of imputation of misconduct or misbehavior in respect of supplementary articles of charge is enclosed at Annexure- II. A list of documents by which, and a list of witnesses by whom, the supplementary article of charge is proposed to be sustained are also enclosed at Annexure-III & Annexure-IV respectively.

2. Shri Neelesh Shah is directed to submit within 15 days of the receipt of this Memorandum a written statement of defense.

3. He is further informed that an inquiry will be held only in case the articles of charge are not admitted by him. He should, therefore, specifically admit or deny each article of charge.

4. He is further informed that, if he does not submit his written statement of defense within 15 days of the receipt of this Memorandum or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 8 of NBCC (Discipline & Appeal) Rules 1993, or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him EX-PARTE.

5. Attention of Shri Neelesh Shah is invited to Rule 20 of NBCC Service (Conduct) Rules, 1969, under which no employee of the Corporation shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Corporation.

6. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Neelesh Shah, is aware of such a representation and that it has been made at his instance and action may be taken against him for violation of Rule 20 of NBCC Service (Conduct) Rules, 1969.

7. A copy of CVC's advice communicated vide OM No. 019/W&H/069-52405 dated 07.09.2022 is enclosed.

8. The receipt of this memorandum shall be acknowledged by Shri Neelesh Shah, Ex-Director (Projects), NBCC.

Sd/-
(S.B. Prasad)
Under Secretary to the Govt. of India

Shri Neelesh Shah
Ex-Director (Projects)
NBCC (India) Limited"

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Supplementary Charge sheet

Annexure-I

<u>STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI NEELESH SHAH, DIRECTOR (PROJECTS), NBCC (INDIA) LTD.</u>

Shri Neelesh Shah, Director (Projects), NBCC (India) Ltd., while working as while working as ED/Sr. Executive Director and head of RBG Real Estate Division of NBCC (I) Ltd. during the period from 2014 to 2018 and Director (Projects) from 19.10.2020 to 30.06.2021 for the Work of "Construction of Group Housing Residential Apartments namely NBCC Green View at Sector 37-D Gurgaon, Haryana" has committed the following lapses/irregularities:-

<u>Article of Charge No. 4:</u>

The Technical audit carried out on 3rd, 5th & 7th December -2015 and 9th - 23rd June-2017 for the project and report was submitted to ED/Sr. ED for compliance.

Based on findings of both the Technical Audit Reports, it appears that the Poor quality of works, Cracks in concrete members, poor alignment of members, seepage etc., existed/started in the period of Dec-2015 and continued during the 2nd Audit done in June-2017. From the compliance report submitted on 10.05.2016 by the Unit to the Audit conducted in Dec-2015, it is noticed that no efforts were made by the Unit to find out the reason of the cracks and reply states only that "the same has been rectified".

Shri. Neelesh Shah, being RBG Head failed to take corrective action as pointed out in technical audit report which resulted in deterioration of the structure.

Further, CTE carried out its inspection on 30.09.2019, 01.10.2019, 03.10.2019 & 04.10.2019 and submitted a report with observations points that, cracks in beams, columns and slabs at several places, plaster was peeling out, heavy leakage and seepage was observed in the basement area, tiles were hollow sounding, line and level were not maintained and poor quality of shuttering was used resulting in uneven and rough surface of RCC members. CTE concluded that the overall quality of the work was very poor and the structural soundness was doubtful.

IIT Delhi conducted Structural Condition test and submitted report with repair methodology dated 02.02.2021. IIT Delhi submitted follow up report of Structural Condition dated 06.10.2021. IIT further submitted report on Suggested Repair after follow up on 17.11.2021.

IIT-Delhi Report dated 07.11.2021 mentioned that,

- "NBCC, its contractors and sub-contractors are wholly responsible for the condition of the structure, the quality of the repair work being carried out and the progression of the deterioration in the structure"

- IIT Delhi in its report has also stated that "Looking at the extent of repairs, it can be inferred that the repair costs will be prohibitive or rather the repairs will not viable economically".

Further, Three (03) members Committee constituted by CMD-NBCC, to review the IIT Delhi reports and recommend further course of action. The report submitted by the committee recommended the following:

- The approximate expenditure indicated by IITD for structural remedial measures including finishing would be approximately Rs.270 Cr, which is equivalent to the project cost.

- Prima facie the revised repair methodology suggested by IIT Delhi report 17.11.2021 seems practically difficult to implement.

Shri Neelesh Shah as ED/Sr. ED(Engg.) and Head of RBG Real Estate Division totally ignored the findings/advise of the Report of Technical Audit carried out on 3rd, 5th & 7th December -2015 and 9th -23rd June-2017 and totally failed on his part to carry out examination of the Cracks as per engineering practice.

The findings of the Report of Technical Audit brought to his knowledge vide letter no NBCC/CGM(Tech.Audit)/HO/2017/918 dated 14.07.2017 to Shri. Neelesh Shah as ED/Sr. ED(Engg.) were not addressed/reviewed by him. Timely examination and finding of the cause of the Cracks with proper remedial measures would have arrested further deterioration of the structure resulting to financial loss to the corporation. This is a case of gross negligence on the part of Shri. Neelesh Shah as ED/Sr. ED(Engg.) and Head of RBG Real Estate Division.

As per NBCC Works Manual 2016 issued on 16.11.2016, Clause 4.3.3.0 Periodicity of inspections by various officers were laid down in tabular format, according to which RBG/SBG Head was expected to conduct 04 periodic inspection every year. Shri. Neelesh Shah as ED/Sr.ED(Engg.) and Head of RBG Real Estate Division should have conducted periodic site inspection which were not done by him in the instant case. Had these inspections conducted by Head of RBG the quality related issues would have been attended well in time. The Clause also states that "All the visiting senior officers shall issue inspection notes".

Thus, Shri. Neelesh Shah, the then ED/Sr.ED (Engg.) and Head of RBG Real Estate Division and also as Director (Projects) looking after the said project works has failed on his part to ensure Compliance of following Technical Audit findings/advise given from 2015 to 2018 to review the Quality of work as ED/Sr.ED(Engg.) and Head of RBG Real Estate Division and allowing execution of sub standard quality of works resulting to Structural distress with total repair to the Buildings costing to a tune of Rs. 270 Cr:

a. Compliance of Clause 4.3.3.0 of NBCC Works M anual 2016
b. Technical Audit carried out on 3rd, 5th & 7th December -2015
c. Technical Audit carried out on 9th -23rd June-2017,

As estimated by the Technical Audit in its report due to the gross negligence and omissions and commissions on part of Shri. Neelesh Shah, the corporation incurred a loss of more than Rs. 300 Crores to the company.

Shri Neelesh Shah, the then ED/Sr.ED(Engg.) and Head of RBG Real Estate Division and also as Director (Projects) failed to maintain absolute integrity, devotion to duty has, thus, contravened Rule 3(1) (i, ii & iii) of the NBCC Service (Conduct) Rules, 1969.

Article of Charge No. 5:

The Technical audit carried out on 3rd, 5th & 7th December -2015 and 9th - 23rd June-2017 for the project and copy of report submitted to Sr. ED for compliance. Despite the poor quality of works no action was taken against the Contractor M/s Rama Constructions. Sub-standard and poor qualities of works executed by the Contractor were completely ignored and overlooked by Neelesh Shah the then ED/Sr.ED(Engg.) and Head of RBG Real Estate Division and the Contractor was allowed to continue the works and was placed on Holiday list only in Feb-2021.

No punitive action was taken against the contractors M/s Rama Constructions for delivering of such poor quality of work despite serious observations through various audits from 2015 onwards. The contractor was allowed to work and was not black listed. The contractor was finally put on Holiday List on 17.02.2021 after a gap of 4 years after the matter was taken up by CTE. Due to this failure on the part of Shri. Neelesh Shah, M/s Rama Constructions obtained big Contracts in Amrapali Project despite the fact that the quality of work was being questioned in the earlier work. This tantamount to giving undue benefit to the contractor M/s Rama Constructions.

Also, Shri Neelesh Shah the then ED/Sr.ED(Engg.) and Head of RBG Real Estate Division of NBCC (I) Ltd, terminated the Contract of M/s Supreme Infrastructure Ltd on 16.10.2014 for Poor Performance and did not to put M/s Supreme Infrastructure Ltd in Holiday List. M/s Supreme Infrastructure Ltd, was placed on Holiday list vide order dated 04.02.2021 after a gap of 7 years after the matter was taken up by the CTE.

Shri Neelesh Shah the then ED/Sr. ED(Engg.) and Head of RBG Real Estate Division of NBCC (I) Ltd is responsible for not initiating/recommending to placing M/s Supreme Infrastructure Ltd and M/s Rama Constructions in Holiday List in accordance with the Guideline of the Company during the period from 2014 -2018 when the Project was under his jurisdiction and thereby according undue benefit to the Contractors.

Shri Neelesh Shah, Director (Projects) has failed to maintain absolute integrity, devotion to duty and acted in manner as unbecoming of an employee of the Corporation. Shri. Neelesh Shah, has, thus, contravened Rule 3(1) (i, ii & iii) of the NBCC Service (Conduct) Rules, 1969.

3. It is not in dispute that the lapses which formed subject matter of the supplementary charge-sheet were distinct and different from the alleged lapses of the respondent which formed subject matter of the original charge-sheet dated 26 April 2021.

4. On 6 January 2023, the Under Secretary to the Government issued the following order, in the name of the Hon'ble President of India:

"F. No. C-14019/1/2020-0/0 US (AV-I)-UD(Part file)
Government of India
Ministry of Housing and Urban Affairs

Nirman Bhawan, New Delhi
Dated 06.01.2023

ORDER

Whereas an inquiry under Rule 8 of the NBCC (Discipline & Appeal), Rules, 1993 is being held against Shri Neelesh Shah, the then Director (Project), NBCC (now Retired) for his lapses in "Construction of Group Housing Residential Apartments, namely, NBCC Green View at Sector 37-D Gurugram, Haryana".

Whereas vide Order No. C-14019/1/2020-0/0 US (AV-I), the Disciplinary Authority (DA) appointed Shri Mukesh Vij, SDG (Retired), CPWD as Inquiring Authority to inquire into the charges against Shri Neelesh Shah, Director (Project) (Retired), NBCC and Siri Anil Yadav, General Manager (Engg.), NBCC as the

Presenting Officer to present the case on behalf of the DA.

Whereas vide letter dated 22.04.2022, the Inquiring Authority submitted the inquiry report for consideration of the DA. The inquiry report was not accepted by the DA as further investigation into the case after receipt of the report of IIT, Delhi has revealed some additional lapses on the part of the CO, Shri Neelesh Shah.

And whereas the DA decided to serve supplementary charge-sheet to the CO, Shri Neelesh Shah for his additional lapses after seeking advice of CVC and have a consolidated inquiry report taking into account the charges of both charge-sheets, i.o. the earlier charge-sheet dated 26.04.2021 and those contained in supplementary charge-sheet. Vide Memorandum dated 26.09.2022, the supplementary charge-sheet was served to the CO, Shri Neelesh Shah in continuation of earlier charge-sheet dated 26.04.2021.

Now, therefore, the Inquiring Authority is hereby directed to conduct the inquiry from the scratch taking into account the charges contained in Memorandum dated 26.04.2021 as well as Memorandum dated 26.09.2022 and submit a consolidated inquiry report for consideration of the DA. The inquiry report of the IA along with the following documents/files attached therewith is returned in original:

(i) A file containing Inquiry Report.
(ii) General correspondence file (Pages 1 to 62)
(iii) CO's brief and PO's brief.
(iv) Prosecution documents and Defence comments.
(v) A file containing examination of prosecution witness, defence witness by PO/CO and General examination of CO by IO.

By order and in the name of the President.

Encl: As above

Sd/-
(S.B. Prasad)
Under Secretary to the Govt. of India"

5. The respondent, at this stage, approached the Central Administrative Tribunal[4] by way of OA 1459/2023, challenging the

4 "Tribunal" hereinafter

initial charge-sheet dated 26 April 2021, the supplementary charge-sheet dated 26 September 2022 and the communication dated 6 January 2023.

6. Before the Tribunal, the respondent contended that the facts of the case were identical to those in OA 1080/2023[5], which had been allowed by the Tribunal by its earlier decision dated 15 December 2023.

7. The Tribunal has allowed the OA filed by the respondent, relying on its earlier decision in ***Rajendra Chaudhari***. For ready reference, the following paragraph from the judgment dated 15 December 2023, of the Tribunal in ***Rajendra Chaudhari*** may be reproduced thus:

> "The applicant holds the position of Senior Executive Director in the National Buildings Construction Corporation Ltd. (NBCC). During his posting as Director (Commercial), he was subjected to disciplinary proceedings under Rule 8 of the NBCC (Discipline & Appeal) Rules, 1993 vide memorandum dated 26.04.202). The said memorandum contained two articles of charges against him. In accordance with the provisions of the NBCC (Discipline & Appeal) Rules, 1993, an inquiry was conducted by the Inquiry Officer (1.0.) appointed by the disciplinary authority, who submitted his report on 28.04.2022. However, the disciplinary authority vide an order dated 06.01.2023 directed that the inquiry may be conducted "from the scratch". The reasons given by the disciplinary authority in the said orders are that on account of certain additional documents and a report of IIT, further collaborated by the advice of the CVC "additional lapses" on the part of the applicant, who was the charged official, had come to notice and taking into account these facts and circumstances, a consolidated inquiry be conducted into fresh charges along with the charges already leveled in the first memorandum. A supplementary charge-sheet was also served upon him, which contained another two charges. The entire dossier, including the Inquiry Report and

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[5] **Rajendra Chaudhari v. Union of India**

the associated correspondence, was returned to the I.O. with the direction to conduct the inquiry "from the scratch" taking into account the charges contained in the memorandum dated 26.04.2021 as well as the memorandum dated 26.09.2022, which contained a supplementary charge-sheet.

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10. In our considered view, at this stage, based upon the arguments put forth by the parties, the issue for consideration is whether the statutory rules governing disciplinary proceedings have been adhered to or not. The arguments put forth by the learned counsel for the applicant also centre around this issue. We have quoted the relevant provisions of Rule 9 and the provisions contained in para 7.20.2 of the Vigilance Manual above. In addition to that, we would also like to record the provisions contained in Rule 8 (19) (i) and (ii) of NBCC (Discipline and Appeal Rules, 1993 as we consider them to be of relevance to the issue at hand.

> "8. PROCEDURE FOR IMPOSING MAJOR PENALTIES
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> 19)(i) After the conclusion of the inquiry, report shall be prepared and it shall contain:
>
> > (a) A gist of the articles of charge and the statement of the imputations of misconduct or misbehavior.
> >
> > (b) A gist of the defence of the employee in respect of each article of charge.
> >
> > (c) An assessment of the evidence in respect of each article of charge.
> >
> > (d) The findings of each article of charge and the reasons therefor.
> >
> > EXPLANATION:
> >
> > If in the opinion of the inquiring authority the proceedings of the inquiry establish ony articles of charge different from the original articles of the charge, it may record its findings on such article of charge.
> >
> > Provided that the findings on such articles of charge

shall not be recorded unless the employee has either admitted the facts on which such articles of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority shall forward to the disciplinary authority the records of inquiry which shall include:

(a) The report of the inquiry prepared by it under sub-clause (1) above.

(b) The written statement of defence, if any, submitted by the employee referred to in such-rule (13).

(c) The oral and documentary evidence produced in the course of the inquiry.

d) Written briefs referred to in sub-rule 916) if any; and (e) The orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

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15. Admittedly, the Inquiry Officer had conducted the inquiry into the charges which were framed against the applicant and submitted his report to the disciplinary authority. Rule 9 of the National Buildings Construction Corporation (NBCC) Discipline and Appeal Rules, 1993, deals with the action which the disciplinary authority is obliged to initiate pursuant to the receipt of the inquiry report. This provision is identical to the relevant provision in CCS (CCA) Rules. In fact, by and large, the NBCC Discipline and Appeal Rules are a mirror image of the CCS (CCA) Rules in terms of the main provisions. There is no ambiguity as far as the provisions of Rule 9 are concerned. On receipt of the inquiry report, the disciplinary authority is supposed to forward a copy of the inquiry report to the employee concerned, who is offered liberty to submit a written representation or submission to the disciplinary authority within a period of 15 days thereafter. After this opportunity is afforded and if any representation is received, the disciplinary authority shall pass an appropriate order after considering the report and the representation so furnished.

16. Rule 9 further stipulates that the report of the inquiry is to be furnished to the employee irrespective of the fact whether it is

favourable or not to the employee concerned. Rule 9 is to be read along with Rule 11 of the said rules and Rule 11 stipulates that the order made by the disciplinary authority shall be communicated to the employee concerned.

17. It is not in dispute that this procedure has not been adopted in the present case. The issue before us is whether the disciplinary authority has correctly interpreted the Rule by issuing the impugned memorandum whereby further inquiry along with the supplementary charge-sheet has been issued or not. Before proceeding further, it would be pertinent to read Rule 8 of the said rules once again; this Rule has been reproduced verbatim in one of the preceding paragraphs. Rule 8 provides that after conclusion of the inquiry, a report shall be prepared which shall contain the following:

(a) Gist of articles of charges and statement of imputation;

(b) Gist of defence;

(c) Assessment of evidence &

(d) Finding on each article of charge and reasons thereof.

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21. No matter how many times we read, we do not find any provision in the said para which authorizes the disciplinary authority to issue a supplementary or fresh charge-sheet after the inquiry is over and when the Inquiry Officer has already submitted his inquiry report. The language of the said paragraph is unambiguous and it states that the amended or supplementary charge-sheet can be issued only "during the course of inquiry" and that too if it is found necessary to amend the charge-sheet.

22. Learned counsel has interpreted this provision by stating that inquiry is considered to be complete only after that disciplinary authority has passed appropriate orders thereupon. We emphatically hold that we cannot agree with this interpretation. We do recognize that disciplinary proceedings would culminate once the disciplinary authority has passed the order, but as far as inquiry is concerned and also, so far as the role of Inquiry Officer is concerned, the same is over once the report is submitted, as at that stage the disciplinary authority will assume its role. There is no ambiguity in the provisions of the rules which have been quoted in one of the preceding paragraphs. In nutshell, the only power which the disciplinary authority enjoys was to direct the Inquiry Officer

to conduct "further inquiry and further can definitely not be interpreted as a fresh "de novo inquiry".

23. We have deliberately kept the term "de novo inquiry" in because the learned counsel has argued that vide the impugned memorandum, what the disciplinary authority seeks is only further inquiry in terms of the powers enjoyed by him under the rules and the supplementary charge-sheet is permissible in terms of the provisions of the vigilance manual. But when we read the impugned memorandum, we find that what the disciplinary authority orders is inquiry "from the scratch". This is surely beyond the purview of the powers enjoyed by the disciplinary authority under the NBCC Discipline and Appeal Rules.

24. In view of what has been elaborately discussed and detailed above, we have no hesitation in holding that the statutory provisions of the NBCC Discipline and Appeal Rules have been compromised at every stage and hence, the proceedings stand vitiated ab initio. Further, the disciplinary authority, in issuing the supplementary charge sheet dated 26.09.2022, has exercised jurisdiction not vested in him.

25. Curiously, the supplementary charge memorandum dated 26/9/2022 was served upon the applicant on 16.01.2023, that is, after a gap of more than 3 months. The impugned memorandum vide which it was served i.e. 06.01.2023 mentions that inquiry report was not accepted by the disciplinary authority as further investigation into the case was required and there were some additional lapses on the part of the charged official. If there were some additional lapses, they could always have formed the part of separate proceedings, but could not be included in the ongoing proceedings as this would vitiate them.

26. The action of the disciplinary authority being unsustainable in terms of the relevant rules are hereby quashed and set aside. To clarify, while allowing the OA, we quash and set aside, the memorandum dated 06.01.2023, the orders dated 26.09.2022 and the initial charge sheet dated 26.04.2021 which has been amended vide the later memorandum of 06.01.2023 along with the charge memorandum dated 26.09.2022."

8. Holding that the facts before it in the case of the respondent were identical to those which had been considered in the case of ***Rajendra Chaudhari***, the Tribunal, by judgment dated 3 May 2024, allowed the respondent's OA in the following terms:

"8. After giving careful consideration to the afore quoted order and going through the voluminous pleadings on record in the instant OA meticulously, we have no doubt in holding that the two OAs bear striking similarity to each other, in fact it would not be hyperbole to say that they are mirror images of each other. In fact, we appreciate the argument put forth by the learned counsel for the applicant that the present applicant is actually better placed in terms of his claim than Sh. Rajendra Chaudhari since the applicant was subjected to the impugned disciplinary proceedings after his retirement, that too for events preceding a period of more than four years prior to retirement. Therefore, there is no cause before us to hold a view which would be at divergence.

9. In view of what has been elaborately outlined above and strictly on analogy of order dated 15.12.2023 in OA No. 1080/2023, we dispose of this OA with the following directions:

(i) The action of the disciplinary authority being unsustainable in terms of the relevant rules is hereby quashed and set aside. To clarify, while allowing the OA, we quash and set aside, the memorandum dated 06.01.2023, the orders dated 26.09.2022 and the initial charge sheet dated 26.04.2021 which has been amended vide the later memorandum of 06.01.2023 along with the charge memorandum dated 26.09.2022.

(ii) We clarify that since the original charge-sheet of 26.04.2021, which had been inquired into and an inquiry report too was submitted, has been amended by way of a supplementary charge-sheet, the same also cannot be sustained at this stage. Accordingly, the entire proceedings stand quashed and set aside.

(iii) The OA stands allowed against the background of the aforesaid directions.

(iv) Since we have quashed and set aside the entire disciplinary proceedings on the ground of non-adherence to the provisions of the Rules and have not dwelt upon any of the merits, the respondents are at liberty to act in accordance with the law."

9. Aggrieved by the impugned decision, the NBCC has approached this Court by means of the present writ petition.

10. We have heard Mr. Soumyajit Pani, learned Counsel for the NBCC and Mr. Manish Kaushik, learned Counsel for the respondent at length.

11. Mr. Pani has broadly reiterated the contentions which were advanced before the Tribunal both in ***Rajendra Chaudhari*** as well as in the present case, and which have not found favour with the Tribunal. It is sought to be contended that the invocation of Rule 8 of the NBCC Rules was misguided, as the supplementary charge-sheet was merely a continuation of the original charge-sheet which had been issued on 26 April 2021, and would, therefore, date back to the said date. Viewed thus, it was sought to be submitted by Mr. Pani that the supplementary charge-sheet could not be treated as instituting fresh disciplinary proceedings, so as to justify invoking Rule 8(20)(1)(b)(2)[6] of the NBCC Rules.

12. Mr. Kaushik, learned Counsel for the respondent, submits, on the other hand, that the Tribunal was justified in the view that it took and that, once the Inquiry Officer has submitted his inquiry report on

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[6] **8. Procedure For Imposing Major Penalties**

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(20) Continuation of Disciplinary Proceedings after retirement

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(1) The Disciplinary Authority may impose penalty on delinquent employees on conclusion of such departmental proceedings which were initiated during their service time and have continued beyond the date of their superannuation.

Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

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(b) That the disciplinary proceedings, if not instituted while the employee was in service, for an offence whether before his retirement or during his re-employment.

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(2) Shall not be in respect of any event which took place not more than four years before such institution.

22 April 2022, apropos the first charge-sheet dated 26 April 2021, there was no jurisdiction or authority with the NBCC to institute a supplementary charge-sheet which effectively amounted to commencement of fresh proceedings. It is submitted that Rule 8 of the NBCC Rules does not permit any such exercise.

13. Mr. Kaushik submits that, therefore, inasmuch as the allegations contained in this supplementary charge-sheet related to events which had taken place more than four years prior to its issuance, the charge-sheet was barred by time in view of Rule 8(20)(1)(b)(2) of the NBCC (Discipline and Appeal) Rules, 1993[7].

14. We have considered the submissions of learned counsel for both sides with all due seriousness.

15. Having heard learned Counsel for the parties, the position which emerges is as under:

(i) The charge-sheet dated 26 April 2021 was admittedly issued to the respondent before he superannuated. As such, it was not hit by Rule 8(20)(1)(b)(2) of the 1993 Rules.

(ii) There was, therefore, no legal embargo on the NBCC proceeding with the inquiry following the 2021 chargesheet.

(iii) The 2022 chargesheet was, however, issued after the respondent had superannuated from service.

[7] "the 1993 Rules" hereinafter

(iv) We are not in agreement with the submission of Mr. Pani that the date of institution of the 2022 chargesheet styled as a supplementary chargesheet should date back to the date of institution of the 2021 chargesheet. The allegations against the respondent in the 2022 chargesheet are distinct from those in the 2021 chargesheet and pertained to distinct alleged lapses. The 2022 chargesheet has, therefore, to be treated as a fresh charge sheet for the purposes of application of Rule 8(20)(1)(b)(2) of the 1993 Rules.

(v) Any other interpretation would render it possible for the NBCC to bypass Rule 8(20)(1)(b)(2) by styling the second charge sheet as a supplementary charge sheet in every case, even though it contains articles of charge distinct from the first charge sheet.

(vi) The bar under Rule 8(20)(1)(b)(2) pertains to *institution* of the disciplinary proceedings. As such, it would impact the very issuance of the chargesheet.

(vii) There could not, therefore, be any inquiry against the respondent following the 2022 chargesheet.

(viii) In that view of the matter, the order dated 6 January 2023, to the extent it permits a consolidated inquiry to be held in respect of the 2021 and 2022 charge-sheets cannot sustain. The Tribunal, therefore, correctly set it aside.

(ix) We find, from the second paragraph of the said order dated 6 January 2023, that the Disciplinary Authority[8] did not accept the inquiry report submitted by the IO in respect of the 26 April 2021 chargesheet, solely on the ground that further investigation had revealed additional lapses on the respondent's part, for which a supplementary chargesheet was in the process of being issued. Inasmuch as we have held that the supplementary chargesheet was vitiated *ab initio*, this ground, on the basis of which the DA chose to disagree with the inquiry report following the 2022 chargesheet, cannot sustain.

(x) We, however, cannot subscribe to the decision of the Tribunal to set aside the 2021 chargesheet wholesale. Apart from the fact that there is no such specific prayer in the OA filed by the respondent, the 2021 chargesheet, as we have held, was issued before the respondent superannuated and was not, therefore, hit by the four year proscription contained in Rule 8 (20)(1)(b)(2) of the 1993 Rules.

(xi) As the ground for disagreement by the DA with the inquiry report submitted by the IO with respect to the 2021 chargesheet has been found by us to be unsustainable, it would be necessary to remit the matter to the DA to take a fresh view on the report of the IO with respect to the 2021 chargesheet. Needless to say, the DA would proceed in accordance with Rules 8 and 9 of the 1993 Rules as well as any other rules which may be applicable.

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8 "DA" hereinafter

16. Insofar as the judgments of the Supreme Court, on which Mr. Pani sought to place reliance, are concerned, they are clearly distinguishable. The decision of the Supreme Court in ***Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh***[9] did not involve any four year proscription as is contained in Rule 8(20)(1)(b)(2) of the 1993 Rules. The decision in ***State of Punjab v. Chander Mohan***[10] involved directing of a fresh inquiry to be conducted on the chargesheet which had already been issued and had not dealt with a issuance of a supplementary or a fresh chargesheet.

17. Both the decisions are, therefore, to our mind, are distinguishable.

18. We, therefore, sustain the impugned order of the Tribunal with the modification that the DA would reconsider the inquiry report submitted by the IO with respect to the 2021 chargesheet and proceed thereafter in accordance with law and the provisions of the 1993 Rules.

19. The writ petition is accordingly disposed of.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

SEPTEMBER 1, 2026/AR

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[9] 1961 SCC OnLine SC 90
[10] (2005) 13 SCC 81