

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12th July, 2010

+ W.P.(C) 4447/2010 & CM Nos. 8841-42/2010

A.K.Mandal Petitioner
Through Mr.G.D.Bhandari, Adv.

-versus-

The Engineering Project (India) Ltd. & ors Respondents
Through: Mr.Rahul Gupta, Adv.

CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

Veena Birbal, J (oral)

By way of present petition, petitioner has challenged the final show cause notice dated 18th June, 2010 by which he has been asked to give his explanation within 15 days from the receipt of the aforesaid notice, failing which it would be presumed that he has nothing to explain and has accepted the penalty.

The facts leading to the filing of the present petition are as under:-

Petitioner was appointed as a Driver with respondent on 8th February, 1975 and was confirmed on 20th February, 1976 and later on was promoted as Senior Driver cum Mechanic. For the past 32-33 years, he has been working with respondent. Petitioner has

alleged that Smt.Kain, another employee of respondents was having social/friendly and family relation with the petitioner. On 13.10.2008, Smt. Anita Kain addressed a confidential letter to respondent no. 1 annexing therewith anonymous letter dated 27.09.2008 and alleged that the same is written by petitioner to her. It is alleged that language and tenor of the anonymous letter addressed to Smt.Anita Kain amounts to sexual harassment at work place. Respondent constituted a 'Sexual Harassment Committee'. The said committee on the basis of opinion of 'Hand Writing Expert' concluded the proceedings and gave its report dated 22nd January, 2009. The Committee confirmed that handwriting of the letter was of the petitioner. The Committee gave a finding that the language and tenor of the letter amounts to sexual harassment of women at work place under Rule 5.34 of Conduct Discipline & appeal Rules, 1999 of respondent. The Committee was further of the view that action needs to be taken against the petitioner as per the conduct rules of the company. On 20th March, 2009, a charge sheet was served on the petitioner with the charge that petitioner had written an anonymous letter dated 27th September, 2008, the language and tenor of which amounts to sexual harassment/misconduct. Petitioner submitted its report denying the allegations and contended that finding of the 'Sexual Harassment Committee' was malicious and denied having written any such letter. Petitioner also requested for supply of anonymous letter dated 27th September, 2008. Thereafter, petitioner gave another representation dated 17th May, 2009 for supply of documents. Respondents vide their letter

dated 12th June, 2009 supplied photocopies of the documents and report of the Sexual Harassment Committee. Petitioner also demanded evidence recorded before the Sexual Harassment Committee. However, respondents informed him that no statement was recorded by the 'Sexual Harassment Committee'. It is alleged that petitioner was also not supplied with attested copy of complaint and copy of anonymous letter despite various letters written to Inquiry Officer in this regard. On 26th August, 2009 the Inquiry Officer submitted its report giving the findings against the petitioner. It is contended that enquiry conducted was in violation of principles of natural justice. On 18.06.2010, final show cause notice has been issued thereby asking the petitioner to explain as to why penalty of removal from services which would not be a disqualification for future employment should not be imposed on you. Petitioner has been asked to give his explanation within 15 days from the receipt of aforesaid final show cause notice. It is this final show cause notice which is under challenge by filing the present petition.

It is alleged that Smt. Kain had earlier also lodged a complaint against him making allegation of sexual harassment wherein enquiry was conducted and petitioner was held guilty and penalty of reduction to lower post for unspecified period was passed and petitioner was transferred also. Petitioner has challenged said punishment by filing W.P.(C) No. 5439/2008 which is pending disposal before this court.

Mr. Rahul Gupta, learned counsel for respondent has appeared on an advance notice of the petition. Counsel submits that present petition is premature and is liable to be dismissed since vide the show cause notice dated 18.06.2010 petitioner had been called upon to submit his report within 15 days from the receipt of said notice. It is submitted that matter of passing any final order of imposing the penalty is pending consideration before respondent no.1. The petitioner vide letter dated 28th June, 2010 sought further extension by 15 days to submit his reply to the final show cause notice dated 18th June, 2010 and with malafide intention, he has approached this court rather than giving any reply to the show cause notice. It is further submitted that there is a proper procedure prescribed in the Conduct, Discipline and Appeal Rules, 1999 (CDA Rules, 1999) of respondent no.1 in respect of major penalty proceedings against an employee including the procedure for departmental appeal. It is contended that present petition is premature and is liable to be dismissed.

I have heard the submissions made.

In the present petition, petitioner has prayed for quashing final show cause notice dated 18th June, 2010. In the said show cause notice, it is stated that the Departmental Inquiry was ordered by the Competent Authority on 29th April, 2009 to inquire into the charges leveled against the petitioner vide charge sheet no.SRO/HR/PER/0283 dated 20th March, 2009. The Inquiry Authority has submitted its report to the Disciplinary Authority. Petitioner has been called upon to explain as to why the penalty of removal from

services which shall not be a disqualification for future employment should not be imposed on him and give his explanation within 15 days from the receipt of said show cause notice.

The petitioner has not submitted his reply to the show cause notice rather has sent a letter dated 28th June, 2010 requesting for some more time to file reply. Learned counsel for respondent has submitted that respondent no.1 is awaiting reply of the petitioner so that appropriate orders can be passed in the matter.

In Chanan Singh Vs Registrar, Co-op Societies, Punjab and others reported in AIR 1976 SC 1821, wherein show cause notice was issued to appellant therein as to why on account of finding of Enquiry Officer he be not dismissed from service. The same was challenged before High Court by filing a petition under Article 226 of the Constitution of India. The High Court dismissed the petition as premature. On challenge before the Supreme Court, the Supreme Court dismissed the appeal and held as under:-

“5.....
No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these issues which merit serious consideration.”

In State of Uttar Pradesh Vs. Brahm Datt Sharma & another reported in (1987) 2 SCC 179, appeal was directed against the order of the High Court of Allahabad quashing the State Government's

notice dated 29th January, 1986 calling upon the respondent to show cause as to why his pension and gratuity be not forfeited. The Supreme Court held that High Court's interference with show cause notice against a Government Servant before reducing his pension under statutory regulations was not called for. The relevant para of the judgment is as under:-

“The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice.”

In Union of India & another Vs. Kunisetty Satyanarayana (2006) 12 SCC 28 wherein issue was maintainability of writ petition under Article 226 of the Constitution of India impugning a show cause notice/charge sheet, the Supreme Court has held as under:-

“14.The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice, or after holding any enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any

party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

It is admitted position that petitioner has not filed reply to final show cause notice dated 18th June, 2010 rather he has applied for extension of time and in the meantime has filed the present writ petition. It is not the stand of the petitioner that entire proceedings are without jurisdiction. The charge against him is of sexual harassment to a co-employee. Enquiry has already been completed.

In view of the above discussion, it will not be appropriate for this court to exercise its jurisdiction under Article 226 of the Constitution of India by quashing the final show cause notice. It may also be mentioned that petitioner has also concealed from the court that he had sought extension of time from respondent by writing a letter for submitting reply to show cause notice. Petitioner is at liberty to give reply to the said show cause notice and make all such grievances as are raised in the present petition including about the validity of enquiry, as is alleged, within six weeks from today. On receipt of reply, respondents will consider the same and pass

appropriate orders in accordance with law. Needless to say that in case petitioner has any grievance against the order passed by the Disciplinary Authority, he will be at liberty to assail the same before appropriate forum in accordance with law.

The writ petition is premature. The same is dismissed in limine. There is no order as to costs.

VEENA BIRBAL, J.

July 12th, 2010
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