

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 13528 of 2015 (M)

PETITIONER(S)/PETITIONER:

**AMRUTHA M GEORGE, AGED 28 YEARS
W/O.JOSE ANTONY
ASSISTANT DIRECTOR (DEVELOPMENT)SPICES BOARD
RESIDING AT CHACKIATH HOUSE, KNNAMMAVU, ERNAKULAM-683518**

**BY ADVS.SRI.G.SHRIKUMAR (SR.)
SMT.C.S.SINDHU KRISHNAH
SRI.R.SANJITH**

RESPONDENT(S)/RESPONDENTS:

- 1. SPICES BOARD
'SUGANDHA BHAVAN' NH BY PASS, PALARIVATTOM PO
COCHIN 682025, REP BY ITS CHAIRMAN**
- 2. THE CHAIRMAN
SPICES BOARD, SUGANDHA BHAVAN', N H BY PASS
PALARIVATTOM P O, COCHIN 682025**
- 3. THE SECRETARY
SPICES BOARD, 'SUGANDHA BHAVAN'
N H BY PASS PALARIVATTOM P O, COCHIN 682025**

**R. BY ADV. SMT.K.RADHAMANI AMMA, SC, SPICES BOARD
R. BY ADV. SRLO.V.RADHAKRISHNAN (SR.)
R. BY ADV. SRI.ANTONY MUKKATH, SC, SPICES BOARD
R BY SRI.ANTONY MUKKATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON 03-08-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:-TRUE COPY OF THE MEMORANDUM IMPUTING ALLEGED CHARGES ON THE PETITIONER ALONG WITH ITS APPENDED DOCUMENTS

EXT.P2:-TRUE COPY OF THE INTERIM ORDER DTD 17/3/2015 IN WPC 8295/2015

EXT.P3:-TRUE COPY OF THE LETTER DTD 10/4/2015 ISSUED BY THE 2ND RESPONDENT

EXT.P4:-TRUE COPY OF THE REPLY ISSUED TO THE PETITIONER UNDER RIGHT TO INFORMATION ACT

EXT.P5:-TRUE COPY OF THE MARK SHEET AS PUBLISHED BY THE 1ST RESPONDENT

RESPONDENT(S)' EXHIBITS:

EXT.1(A): COPY OF THE CIRCULAR NO.ADM/ESTT/MISC/1/2012 DATED 11.8.2014 OF THE 1ST RESPONDENT.

EXT.R1(B): COPY OF THE MEMORANDUM NO.ADM/AOO/02/2010/6844 DATED 17.12.2010 OF THE 1ST RESPONDENT.

EXT.R1(C): COPY OF THE MEMORANDUM NO.ADM/APP/15/10-11/3785-3790 DATED 25.10.2012 OF THE 1ST RESPONDENT.

EXT.R1(D): COPY OF THE MEMORANDUM NO.ADM/TRA/01/14-15 DATED 13-10-2014 OF THE 1ST RESPONDENT.

EXT.R1(E): COPY OF THE NOTIFICATION NO.5 DATED 10.10.2014 OF THE 1ST RESPONDENT.

EXT.R1(F): COPY OF THE PROCEEDINGS OF THE COMMITTEE FOR THE SELECTION OF THE DEPUTY DIRECTOR, SPICES BOARD ALONG WITH SCORE CARD.

EXT.R1(G): COPY OF THE MEMORANDUM NO.ADM/TRA/01/14-15 DATED 13.10.2014 OF THE 1ST RESPONDENT.

EXT.R1(H): COPY OF THE MEMORANDUM NO.SB /DF/OM/2014/4 DATED 16.10.2014 OF THE DIRECTOR.

EXT.R1(I): COPY OF THE PROCEEDINGS DATED 9.5.2015 OF THE FIRST APPELLATE AUTHORITY.

EXT.R1(J): COPY OF THE PROCEEDINGS DATED 10.5.2015 OF THE FIRST APPELLATE AUTHORITY.

//TRUE COPY//

P.S. TO JUDGE

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.13528 OF 2015 (M)

Dated this the 3rd day of August, 2015

J U D G M E N T

The petitioner who is currently working as Assistant Director (Development) with the 1st respondent Board, joined the services of the Board as an Assistant Director (Accounts) in 2010. With effect from 25.10.2012, she was posted as Assistant Director (Development), and while working as such, the petitioner entered on maternity/child care leave. She rejoined duty only with effect from 8.5.2014. On 17.9.2014, the 1st respondent Board notified vacancies to the post of Deputy Director (Accounts) and Deputy Director (Audit and Vigilance), to be filled by direct recruitment. The petitioner also applied for the said post. While so, by an order dated 13.10.2014, the petitioner was transferred to Kohima as Assistant Director (Development). The petitioner challenged the said order of transfer through W.P.(C).No.8295/2015, and the said writ petition is still pending consideration before this Court. By an interim order dated 17.3.2015, in the said writ petition, this Court directed the respondent Board to consider a representation that had been preferred by the

petitioner against the transfer. By Ext.P3 order dated 10.4.2015, the said representation of the petitioner came to be rejected. Pursuant to the said order, the petitioner proceeded to take up her assignment at Kohima.

2. In the selection process pursuant to the recruitment notification dated 17.9.2014, the petitioner was not selected to the post that she applied for. She therefore preferred an application dated 13.2.2015 under the Right to Information Act, 2005 [hereinafter referred to as the 'RTI Act'], seeking information pertaining to the examinations conducted by the respondents in connection with the recruitment. In the application filed, the petitioner sought for details of the answer papers of the petitioner as well as other candidates so as to compare the same. While preferring the application, the petitioner, through a covering letter, indicated her reasons for preferring the application. Taking objection to the reasons stated by the petitioner in her application for seeking documents under the RTI Act, the respondent Board issued a memo dated 25.3.2015 seeking the petitioner's explanation for making, what they believed were, unsubstantiated statements against the respondents. Although the

petitioner preferred a reply to the said memo served on her, the respondents proceeded to issue Ext.P1 charge memo dated 27.4.2015, contemplating disciplinary proceedings against the petitioner for having made unsubstantiated statements in the application under the RTI Act. In the writ petition, the petitioner impugns Ext.P1 charge memo that is issued to her inter alia on the ground that the said charge memo issued to her is virtually an act of harassment, and that the charge memo has been issued with mala fide intents and is baseless with regard to the charges alleged against her.

3. A counter affidavit has been filed on behalf of respondents 1 to 3. Therein, it is stated that what is served on the petitioner is only a charge memo, which marks the initiation of disciplinary proceedings, and hence this Court ought not to interfere with the said charge memo since the sustainability of the charge against the petitioner can be decided only in the enquiry that is to follow. It is stated that the reckless and defamatory statements made in the application filed by the petitioner, under the RTI Act, constitute a misconduct. The respondents deny the averments in the writ petition that suggest mala fides as forming the basis of Ext.P1 charge memo.

The respondents also justify the order of transfer that was served on the petitioner, transferring her to Kohima. As regards the selection process that was conducted by the respondents, pursuant to the recruitment notification, it is the stand of the respondents that the selection of candidates was pursuant to a fair and transparent procedure, and therefore, the suggestion of illegality is not substantiated in the writ petition. It is also pointed out that, dissatisfied with the documents furnished to her pursuant to her application under the RTI Act, the petitioner has already preferred an appeal before the Appellate Authority, and the Appellate authority has since disposed the appeal. It is, in particular, pointed out that, although the petitioner was given a copy of her answer sheet and the marks awarded to her, she has not alleged that the marks obtained by her were lower than what she had expected. In a reply affidavit filed by the petitioner, the averments in the counter affidavit are traversed in detail.

4. I have heard the learned senior counsel Sri.G.Shrikumar on behalf of the petitioner and also the learned senior counsel Sri. O.V.Radhakrishnan on behalf of the respondent Board.

5. The contentions of the learned senior counsel appearing on behalf of the petitioner, can be summarised as follows:

(i) The averments that the respondents have taken objection to, were made by the petitioner, in an application preferred under the RTI Act, seeking documents that would enable her to substantiate her bona fide belief that the selection process was not done in a fair manner. It is his specific contention that the averments in the RTI application only evidenced the existence of a belief in the petitioner, of an undesirable state of affairs prevailing in the respondent board, and, therefore, that could not have formed the basis of any disciplinary proceedings initiated against the petitioner.

(ii) The petitioner would contend that insofar as the averments in question were made in an application preferred under the RTI Act, even if the application was found to be not in the proper format, and there was no justification for including the averments in the said application, the same could not have formed the basis of a charge sheet which proceeded on an assumption that allegations had been raised against the respondents. It is her case that the averments in question are not in the nature of allegations against the respondents, but are only expressions of the belief harboured by the petitioner.

(iii) As per the provisions of Section 21 of the RTI Act, there is a protection given to an applicant in respect of an application that has been preferred in good faith under the RTI Act. In the instant case, inasmuch as the respondents were proceeding against the petitioner, based on the contents in an application preferred by the petitioner, under the RTI Act, the petitioner would be entitled to the protection conferred under the RTI Act, and thereby, be immune from any disciplinary proceedings initiated against her by the respondents.

(iv) It is the specific case of the petitioner that, in both in the memo dated 25.3.2015, and in the subsequent charge memo (Ext.P1) dated 27.4.2015, issued to her, the respondents have already found that the averments in the application filed by her are unsubstantiated. It is her case, therefore, that the entire proceedings against her have been initiated in a premeditated manner, and any enquiry undertaken against her would be a farce. Reliance is placed on the decision reported in **Oryx Fisheries Private Limited v. Union of India and Others - [(2010) 1 SCC 427]**.

(v) It is the further case of the petitioner that the issuance of the charge memo has to be viewed in the backdrop of the other actions of the respondents against the petitioner, namely, the posting of the petitioner as Assistant Director (Development) with effect from 25.10.2012, when her specialty was in Accounts, and she

had joined the service of the respondent Board as Assistant Director (Accounts), and her transfer to Kohima, immediately after she rejoined the service after availing maternity/child care leave, unmindful of the fact that she was a nursing mother. It was thereafter that, when she preferred an application dated 13.2.2015 under the RTI Act, a memo was issued to her, almost immediately, on 25.3.2015, finding that her averments in the application tantamounted to making unsubstantiated allegations against the respondents, for which, she could be proceeded against in accordance with the Rules of the Organization. The petitioner contends that Ext.P1 charge memo, when viewed in the backdrop of surrounding events, is clearly vitiated by mala fides.

6. Per contra, the contentions of the learned senior counsel for the respondent Board, briefly stated, are as follows:

(i) The writ petition filed by the petitioner challenging Ext.P1 charge memo is not maintainable, insofar as the charge memo evidences the commencement of a disciplinary proceedings, and it is trite that, this Court, in exercise of its powers of judicial review, will not ordinarily interfere with charge memo initiating disciplinary proceedings. Reliance is placed on the following decisions:

Union of India and Another v. Ashok Kacker - [1995 Suppl (1) SCC 180], Dy.Inspector General of Police

v. K.S.Swaminathan - [(1996) 11 SCC 498], State of Punjab v. V.K.Khanna and Others - [(2001) 2 SCC 330], Union of India and Another v. Kunisetty Satyanarayana - [(2006) 12 SCC 28] and Secretary, Ministry of Defence and Others v. Prabhash Chandra Mirdha - [(2012) 11 SCC 565].

(ii) The averments made in the application filed by the petitioner, under the RTI Act, clearly amounted to reckless defamatory statements made against the respondents, and hence, the averments amounted to making unsubstantiated allegations against the respondents, for which, the petitioner could be proceeded against, in accordance with the Rules governing disciplinary proceedings that were applicable to the Organization.

(iii) The petitioner could not rely on Section 21 of the RTI Act, inasmuch as the said provision affords a protection only to persons exercising a power under the said Act, and not to a person who merely prefers an application under the RTI Act.

7. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the writ petition, in its challenge against Ext.P1 charge memo, must necessarily succeed. The main issue that arises for consideration in

the instant case is whether the statements made by the petitioner, in a covering letter that accompanied an application under the RTI Act, seeking certain documents that were in the possession of the respondent Board, can constitute the misconduct alleged by the respondents in the charge sheet issued to the petitioner. The statement, to which the respondents take objection, reads as follows:

"Since I feel that I am entitled to get more marks in the Descriptive and multiple choice examination held on 2nd November, 2014, for the post of Deputy Director (Accounts) and Deputy Director (Audit & Vigilance) as per notification No.5 dated 17/9/14. Since I have unearthed certain illegal aspects from the side of the superior authorities regarding valuation of the answer sheets with specific instruction to award less marks to me, I firmly believe that certain manipulations are done so as to make me the last rank holder. Therefore I request the original copy of the answer sheets of all the candidates along with question paper are provided to me in the above mentioned examination as per the RTI Act."

8. According to the respondent Board, the making of the said statement in the covering letter constituted the following misconduct falling under Rule 3(1)(i) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964, which are extracted hereunder:

3. GENERAL

(1) Every Government servant shall at all times -

- (i) maintain absolute integrity;
- (ii)
- (iii) do nothing which is unbecoming of a Government servant.

9. To my mind, the statement made by the petitioner, as noted above, appears to be nothing more than the expression of a belief that was entertained by the petitioner based on material that she claimed she already had with her. The contention of the respondents on the other hand, is that the making of the statement in an application filed under the RTI Act, and before a person, who was not adjudicating the issue pertaining to the legality of the selection process undertaken by the respondents, amounted to making unsubstantiated allegations/imputations against the respondent. I am not impressed with the said contention advanced on behalf of the respondents. Firstly, as already observed, the statements do not appear to me as making any allegation against the respondents. Apart from merely expressing the reasons that weighed with the petitioner for seeking documents under the RTI Act, the statement did not refer to any particular officer/officers or to any specific instructions issued by them. Secondly, the statement was made in an application for

documents under the RTI Act and was therefore addressed only to the officer concerned in the respondent's office. There was no publication of the statement in a medium that was accessible by the general public or even other personnel in the respondent's office. Thirdly, I note that the Supreme Court has, in a recent decision in **Vijay Shankar Pandey v. Union of India and Another - [(2014) 10 SCC 589]**, frowned upon any attempt to proceed against an employee who merely made allegations in a writ petition, regarding the working of an organization. The observations of the Court are to be found at paragraphs 47 to 50 of the judgment and read as follows:

"47. We are at a loss to comprehend how the filing of the writ petition containing allegations that the Government of India is lax in discharging its constitutional obligations of establishing the rule of law can be said to amount to either failure to maintain absolute integrity and devotion to duty or of indulging in conduct unbecoming of a member of the Service.

48. Even otherwise, the impugned order, in our opinion is wholly untenable. The purpose behind the proceedings appears calculated to harass the appellant since he dared to point out certain aspects of maladministration in the Government of India. The action of the respondents is consistent with their conduct clearly recorded in Ram Jethmalani v. Union of India. The whole attempt appears to be to suppress any probe into the question of black money by

whatever means, fair and foul. The present impugned proceedings are nothing but a part of the strategy to intimidate not only the appellant but also to send a signal to others who might dare in future to expose any maladministration. The fact remains, that this Court eventually agreed with the substance of the complaint pleaded in Writ Petition (C) No.37 of 2010 and connected matters; and directed an independent inquiry into the issue of black money.

49. The Constitution declares that India is a sovereign democratic republic. The requirement of such democratic republic is that every action of the State is to be informed with reason. State is not a hierarchy of regressively genuflecting coterie of bureaucracy.

50. The right to judicial remedies for the redressal of either personal or public grievances is a constitutional right of the subjects (both citizen and non-citizens) of this country. Employees of the State cannot become members of a different and inferior class to whom such right is not available. The respondents consider that a complaint to this Court of executive malfeasance causing debilitating economic and security concerns for the country amounts to inappropriate conduct for a civil servant is astounding."

No doubt, in the instant case the statement was not made in a writ petition or for that matter in a document presented before any adjudicatory forum, but that by itself does not take away from the fact that the respondents, by initiating disciplinary action against the

petitioner are effectively preventing her from pursuing a matter which, if established, would be an undesirable state of affairs and opposed to public interest.

10. It is also important to note that, in the instant case, the respondents appear to have proceeded with undue haste against the petitioner, while issuing the charge sheet to her. As already noticed, the charge sheet was issued in connection with certain statements made by her in an application under the RTI Act. If the respondents really believed that the statements were unfounded or were made in a reckless manner, and thereby constituted an act of indiscipline, they ought to have waited for the petitioner to act on her belief and prefer a complaint, either before the respondents or before any other adjudicatory forum, before initiating proceedings against her. In the event of the petitioner having filed a formal complaint, and a finding rendered therein that the complaint was baseless, the respondents could have proceeded against the petitioner with the charges that are now served on her. The respondents could have proceeded against the petitioner even in a situation where, after the lapse of a reasonable period of time, the petitioner did not pursue the matter before any

forum. The issuance of the charge sheet at this stage, on the other hand, appears to be an act that is intended to scuttle any enquiry with regard to the apprehensions raised by the petitioner as regards the conduct of the selection process. Further, it is also relevant to note that the charge sheet issued to the petitioner was preceded by a memo, dated 25.03.2015 that sought for an explanation from the petitioner as to why disciplinary action should not be taken against her. The averments in the memo suggest that the respondents were already of the view that the petitioner had made a serious allegation against the officers of the respondent Board, without there being any material or evidence, and the proposal was to proceed against her for the said conduct which the respondent Board viewed as highly reprehensible. The said memo does not provide the petitioner with an opportunity to establish that her statement in the RTI application did not amount to an "allegation" at all. The respondent Board in the memo issued to the petitioner already finds that there was an allegation. In that sense, therefore, the proceedings initiated against the petitioner are wholly unfair, in that it demonstrates a totally closed mind of the respondents at the stage of the show cause notice. It would be apposite at this stage to notice the decision of the

Supreme Court in **Oryx Fisheries Private Limited v. Union of India and Others - [(2010) 1 SCC 427]**, where the Supreme Court found that a show cause notice, that was served on the appellant in that case, was one that confronted him with definite conclusions of his alleged guilt and observed as follows:

“27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of the quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

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31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing

is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.*

33. *The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."*

11. In the light of the above discussion, I find that Ext.P1 charge memo issued to the petitioner is legally unsustainable since it is one that confronts the petitioner with definite conclusions of her

alleged guilt, and is issued at a point in time that can only be viewed as premature.

12. I must now deal with the contention of the learned senior counsel for the respondents with regard to the maintainability of a writ petition challenging the charge memo. The decisions relied upon by the learned counsel would unambiguously suggest that a writ petition would not ordinarily be entertained against a charge memo that is served on a delinquent employee since the issue of whether a charge against the employee is established or not can be gone into in the enquiry proceedings that are to follow. The said settled legal position does, however, admit of exceptions as was noticed by the Supreme Court in **Dy. Inspector General of Police v. K.S. Swaminathan - [(1996) 11 SCC 498]**, where the Court observed as follows:

“4. It is settled law by a catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the tribunal or the court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of

facts and the charge-sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct.”

13. Similarly in **State of Punjab v. V.K.Khanna and Others - [(2001) 2 SCC 330]**, it was observed as follows:

“33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.”

14. In the instant case, the stage at which the charge memo was issued namely, when the petitioner was collecting data to test the veracity of her apprehensions, and the tenor of the averments in the charge memo, and the memo that preceded it, that clearly indicate that the respondents have commenced the proceedings with a closed mind, lead me to believe that the petitioner cannot expect a fair treatment in the proceedings that are now initiated against her. That apart, I also find force in the contention of the learned senior counsel for the petitioner that Section 21 of the RTI Act affords a protection to an applicant who prefers an application in terms of the Act. The contention of the learned senior counsel for the respondents that the said provision offers immunity from legal proceedings only to officers exercising powers under the Act does not appeal to me as convincing since the express provisions of Section 21 of the RTI Act do not admit of any such restricted interpretation to be placed on the provisions.

Thus, in any view of the matter, Ext.P1 charge memo cannot be legally sustained at this stage. Accordingly I quash Ext.P1 charge memo, leaving it open to the respondents to proceed against the

petitioners at a later stage, if so advised and if circumstances exist that necessitate such action against the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp