

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.37890 of 2016
and WMP No.32469 of 2016

B.Rajasekaran

.. Petitioner

versus

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 104.

2. The Union of India,
Rep. by it's, The Chief Post Master General,
Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.

3. The Union of India,
Rep. by it's, The Post Master General,
Central Region (TN),
Department of Post,
Tiruchirapalli - 620 001.

4. The Union of India,
Rep. by it's, The Director, Postal Training Center,
Madurai - 625 022.

5. The Union of India,
Rep. by it's, The Superintendent of Post Offices,
Pattukottai Division,
Pattukottai - 614601

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in OA.No.310/00347/2014 dated 22.7.2016 and quash the same and to consequently direct the respondents 2 to 5 drop the Disciplinary Proceedings as against the petitioner and pay the retirement benefits on the basis of petitioner representation dated 7.10.2013.

For Petitioner : Mr.Chellapandian
for Mr.R.Indhumathi

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Challenge in this writ petition is to an order made in O.A.No.310/00347/2014 dated 22.07.2016, by which, the Central Administrative Tribunal, Madras, declined to quash the charge memo dated 21.02.2013, issued by the Superintendent of Post Office, Pudukottai Division, Pudukottai, the 5th respondent herein, and the order dated 10.01.2014 of the Chief Postmaster General, Tamilnadu Circle, Chennai, rejecting the representation of the writ petitioner dated 07.10.2013.

2. Short facts leading to the writ petition are that while the petitioner was working as an officiating Postmaster at Pudukottai Head Quarters, he was placed under suspension by the Director, Postal Training Centre, Madurai, the 4th respondent herein, vide order dated 04.01.2013,

under sub Rule(1) of Rule 10 of CCS (CCA) Rules, 1965. Thereafter, on 21.02.2013, Superintendent of Post Office, Pudukottai Division, Pudukottai, the 5th respondent herein, issued a charge memo. Subsequently, suspension of writ petitioner was revoked and he was reinstated as Assistant Postmaster, Pudukottai. He made a representation dated 07.10.2013, to the 5th respondent herein, requesting to cancel the charge memo, stating that it is baseless, contrary to Rule-14, and motivated. The said representation was rejected by the 5th respondent, vide order dated 10.01.2014.

3. Assailing the correctness of the abovesaid orders, petitioner has filed O.A.No.310/00347/2014, before the Central Administrative Tribunal, Madras Bench.

4. Adverting to the rival submissions, the tribunal, vide order dated 22.07.2016 in O.A.No.310/00347/2014, declined to grant the relief sought for and permitted the respondents to conduct the enquiry, conclude the entire disciplinary proceedings and pass final orders, within a period of six months, from the date of receipt of that order. The writ petitioner has also been directed to co-operate with the disciplinary proceedings for earlier finalisation and disposal of the same.

5. Though, Mr.Chellapandian, learned counsel for the writ petitioner assailed the impugned order on the merits of the case, this Court is not inclined to advert to the same for the reason that, in exercise of powers under Article 226 of the Constitution of India, High Court should not be called upon to enquire into the merits of the charge, when there is an hierarchy of officers in the disciplinary or Conduct rules, to conduct an enquiry and deal with the factual aspects and arrive at a finding. Procedure has been prescribed under the rules, to examine witnesses, to prove the charges levelled. Writ against show cause notice/charge memo is not maintainable unless the petitioner substantiates that the notice issued, is without jurisdiction or where there is an inordinate delay, prejudicing the interest of the employee. Even in the latter case, interference depends upon the facts and circumstances of each case.

6. The Hon'ble Apex Court has consistently held that a charge memo or a show cause notice cannot be quashed at the threshold, unless in a very rare and exceptional cases, where there is lack of jurisdiction. Useful reference can be made to few decisions on this aspect.

(i) In **State of U.P. v. Brahm Datt Sharma** reported in **1987 (2) SCC 179**, at Paragraph 9, held as follows:

"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 to have interfered with the show cause notice.'

(ii) In **Union of India v. Upendra Singh** reported in **1994 (3) SCC 357**, the Central Administrative Tribunal examined the correctness of the charges against the respondent therein, on the basis of the material produced by him and quashed the same. The Union of India preferred an appeal. The Hon'ble Supreme Court, after considering the decisions in **T.C.Basappa v. T.Nagappa** reported in **AIR 1954 SC 440**, which was followed in **Ujjam Bai v. State of U.P.**, reported in **AIR 1962 SC 1621** and **V.D.Trivedi v. Union of India** reported in **1993 (2) SCC 55**, at Paragraphs 4 and 6 of the judgment in **Upendra Singh's** case, held as follows:

"In the case of charges framed in a disciplinary

inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court, it would have been termed, properly speaking, as a Writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view."

(iii) The Hon'ble Supreme Court in **Special Director v. Mohd. Ghulam**

Ghouse reported in **2004 (3) SCC 440**, at paragraph 5, held as follows:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is

not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iv) In **Union of India v. Kunisetty Satyanarayana** reported in **AIR 2007 SC 906**, the respondent therein was issued with a charge memo for availing reservation against the post earmarked for ST, though he did not belong to the said category. Instead of submitting a reply to the charge memo, he preferred Original Application before the Central Administrative Tribunal, which disposed of the same with a direction to the respondents to submit the explanation to the charge memo and on such reply, the disciplinary authority was directed to consider the same. Instead of filing the reply, the respondent therein filed a Writ Petition, which was allowed. Testing the correctness of the order of the Andhra Pradesh High Court, the Hon'ble Supreme Court, at paragraphs 13, 14 and 16, held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide, **Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors.** [JT 1995 (8) SC 33], **Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr.** [AIR 2004 SC 1467], **Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors.** [2001(10) SCC 639], **State of U.P. v. Brahm Datt Sharma and Anr.** [AIR 1987 SC 943] etc.

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 an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. 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.

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."

(emphasis supplied)

(v) In **Ministry of Defence vs. Prabhash Chandra Mirdha**, reported in **2012 (11) SCC 565**, the Hon'ble Apex Court has held as follows:-

"Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does

not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court."

7. In the light of the above discussion and decisions, we find no infirmity in the order of the Central Administrative Tribunal, Madras Bench, warranting intervention. Hence, the writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

[S.M.K., J.] [N.A.N., J.]
03.11.2016

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