

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3263 of 2019

Sumit Kumar Natwar S/o Late Shri Kaushal Kishore Jha, Aged About 27 Years, Presently Posted As Constable At CISF Unit, NTPC Sipat, Tahsil - Masturi, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Home Affairs, Government Of India, Secretariat, North Block, New Delhi - 110001
2. Director General, CISF, Block No. 13, CGO Complex, Lodhi Road, New Delhi 110003
3. Inspector General, CISF Headquarter, Central Zone, Sector - 3 Bhilai, District Durg, 490001
4. Deputy Inspector General, CISF Headquarter, Central Zone, Sector - 3, Bhilai, District Durg 490001
5. Senior Commandant, CISF Unit BIOM - Bacheli, District Dantewada, Chhattisgarh 494553
6. Assistant Commandant, CISF Unit, BIOM - Bacheli, District Dantewada, Chhattisgarh 494553

---Respondents

For Petitioner	:	Mr. Sangharsh Pandey, Advocate
For Respondents	:	Mr. B. Gopa Kumar, ASG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/05/2019

1. The challenge in the present writ petition is to the show cause notice dated 16.04.2019 passed by respondent no.4.
2. The facts of the case are that the petitioner while working as a Constable with the respondents was subjected to a disciplinary proceeding and was

inflicted with punishment vide Annexure P-2 dated 31.12.2018. The punishment imposed upon the petitioner was:

“Reduction to lower stage in pay matrix (Level-3) by one stage for a period of five years with further direction that he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing of his future increments of pay.”

3. Subsequently, in 3 ½ months time, respondent no.4 has now issued a show cause notice to the petitioner in exercise of its power under Rule 54 of the CISF Rules, 2001 seeking to enhance the punishment and in the process, the show cause notice dated 16.04.2019 was issued proposing the punishment of removing the petitioner from service. While issuing the notice, respondent no.4 has granted 10 days time to the petitioner for giving his reply/explanation to the show cause notice. It is this notice which is under challenge in the present writ petition.
4. Contention of the counsel for the petitioner is that the present writ petition may be entertained by this Court and the impugned notice may be stayed or else the respondents would remove the petitioner from service which would be detrimental in the larger interest of justice. He submits that it is a case where respondent no.4 with a pre-determined mind issued the show cause notice in as much as he has already proposed for imposition of punishment by removing the petitioner from service and the explanation/reply which the petitioner may provide would only be an empty formality. Counsel for the petitioner referred to few judgments which are as follows:
 - i) State of Uttar Pradesh Vs. Ram Daras Yadav, 2010 (2) SCC 236
 - ii) Sunil Kumar Vs. UOI, DLT-2011-178-628

- iii) Rajesh Kumar Yadav Vs. Union of India and others, 2017 (2) CLR 206 (Calcutta)
- iv) Amarjeet Singh Vs. State of U.P., 2003 (10) LAWS(ALL) 105
- v) G. D. Karthik Vs. Union of India and Ors., 2015 (9) LAWS (DLH) 355

5. Counsel for the petitioner further submits that in these judgments, the Courts have entered with the order of punishment holding the punishment to be excessive/disproportionate and harsh and therefore, the impugned notice should also be interfered at this juncture as the proposed punishment is too harsh and excessive. Counsel for the petitioner also relied upon a decision of the Supreme Court in the case of Om Kumar Vs. Union of India reported in 2001 (2) SCC 386 wherein the Hon'ble Supreme Court had interfered with the impugned show cause notice therein.
6. Having heard the contention put forth by the counsel for the petitioner and on perusal of record what cannot be brushed aside is the fact that the stage at which the writ petition has been filed is only a show cause stage. It is settled position of law that Courts should not interfere with the show cause notice for the simple reason that the show cause notice cannot be said to be a decision taken by the authority concerned. It is only calling for an explanation/reply from the delinquent employee and based upon the contents of the reply/explanation that would be furnished by the employee to the concerned authority, a final decision would be taken. It is only the final decision that is taken by the respondents or the concerned authority that would be subjected to judicial review under Article 226/227 of the Constitution of India.
7. Perusal of the records would also show that there is no dispute so far as the competency of the authority who has issued the show cause notice is

concerned. There is also no dispute to the fact that the notice has been issued within the permissible period of 6 months. It is also not a case of the notice being barred in any manner. Thus, at this juncture, this Court finds it difficult to interfere with the show cause notice issued by the respondents. However, taking into consideration the entire factual aspects of the case, particularly taking note of the punishment order dated 31.12.2018 Annexure P-2 issued by the Commandant which itself is a major penalty and the same having been passed after thorough appreciation of the entire facts of the case, this Court is of the opinion that respondent no.4 who has issued the impugned show cause notice, while deciding the case of the petitioner, would keep in mind the entire factual matrix, the finding of the disciplinary authority and also the contents of the reply/explanation that the petitioner would furnish and only thereafter would take a final decision. It is expected that respondent no.4 shall decide the same by a reasoned and speaking order.

8. With the aforesaid observation the writ petition at this juncture stands dismissed. Needless to mention that the petitioner would render all necessary co-operation by submitting his reply/explanation, if not filed till now, at the earliest.

Sd/-
(P. Sam Koshy)
Judge