

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4888 of 2019**

Shrirang Sharad Pathak S/o Shri Sharad Pathak Aged About 58 Years R/o
H- 3, Vishal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur,
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Tourism, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Tourism Board, Through The Managing Director, Udyog Bhawan, Second, Floor, Ring Road, No. 1, Raipur, District Raipur Chhattisgarh

---Respondents

For Petitioner	:	Mr. Kshitij Sharma, Advocate.
For State	:	Mr. Jitendra Pali, Dy. A. G.
For respondent No. 2	:	Mr. Yogendra Pandey Adv. on behalf of Mr. Animesh Tiwari, Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/07/2019

1. The Challenge in the present writ petition is to the show-cause notice dated 12.06.2019 whereby the respondent No. 2 has sought for an explanation of the petitioner as to why the promotion that was granted to the petitioner as early as on 25.11.2005 should not be recalled.
2. At the outset, this Court is not inclined to entertain the writ petition for the simple reason that the petitioner has been issued with only a show cause notice. The petitioner has been given a chance to reply to the show-cause notice and the respondents in turn are now expected to properly appreciate the reply before they proceed further with the show-cause notice.

3. It is a settled position of law that the High Court under Article 226 of the Constitution of India would not sit as an Administrative Appellate Body on the show-cause notice issued and decide the veracity of contents of show-cause notice.
4. The Supreme Court in the case of **State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179]** dealing with the scope of judicial interference in disciplinary matters was of the opinion that, “the purpose of issuing show cause notice is to afford an opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfere with the show cause notice.
5. A similar view has been taken by the Supreme Court in case of **Union of India Vs. Kunisetty Satyanarayana**, reported in 2006 (12) SCC 28, the Supreme Court held that:-
 - “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 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,ordinarliy
the High Court should not interfere in such a matter.”

6. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of
Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565] in
paragraph 10 & 12 has held as under:-

“10. Ordinarily a writ application does not lie against a
charge-sheet 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 charge-sheet or show-cause notice in
disciplinary proceedings should not ordinarily be quashed
by the court.”

7. Reserving the right of the petitioner to give a detailed reply to the
show-cause notice Annexure P/1 dated 12.06.2019 and respondents
are expected to consider the objection/explanation that the petitioner
shall submit in his reply to the show-cause notice objectively before
proceeding further on it. The petitioner would also be at liberty to
raise the objection so far as the competency and the Jurisdiction of
the respondents in initiating the show-cause notice.
8. With the aforesaid observations, the present writ petition stands
disposed off.

**Sd/-
(P. Sam Koshy)
Judge**