

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 27.09.2019

Reserved On: 16.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.826 of 2019

P.Nagarajan

... Petitioner

Vs.

1.Union of India,
Rep. by its Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi.

2.The Director General of Police,
Directorate General of CRPF,
Ministry of Home Affairs,
Block No.1, CGO Complex,
Lodhi Road, New Delhi 110 003.

3.The Deputy Inspector General (CR & Vig.),
Directorate General of CRPF,
Ministry of Home Affairs,
Block No.1, CGO Complex,
Lodhi Road, New Delhi 110 003.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in respect of the show cause notice Ref.No.D.IX-05/2013-CRC dated 17.10.2018 issued by the 3rd respondent, quash

the same and consequently direct the respondents to drop all further departmental proceedings based on the order dated 31.07.2018 passed by the Hon'ble Special Judge for CBI Cases, Chennai (XII Additional) in C.C.No.7 of 2014.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.R.Maheswari
For Respondents : Mr.K.Srinivasa Murthy for R1 to R3

ORDER

The petitioner has filed this petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent in respect of the show cause notice Ref.No.D.IX-05/2013-CRC dated 17.10.2018 issued by the third respondent, to quash the same and to consequently direct the respondents to drop all further departmental proceedings based on the order dated 31.07.2018 passed by the learned Special Judge for CBI Cases, Chennai (XII Additional) in C.C.No.7 of 2014.

2.The case of the petitioner is that he joined the services of Central Reserve Police Force on 14.08.1986 and has rendered commendable service all along for over 32 years. As a member of the armed forces, there has been several instances of threat to the life of

the petitioner during discharge of his duty in the service of the country. The petitioner was actively involved in several encounter operations including the Punjab terrorism during 1988-90, terrorism in Kashmir during 1990-94, 1996-99 and during 2003-07.

3.It is the further case of the petitioner that the service rendered by the petitioner to the Department has been duly recognised and is the recipient of several medals during his career which includes Special Duty Medal Punjab, Special Duty Medal North East, Special Duty Medal J & K, Police Medal for Gallantry, Meritorious Service Medal, DG's Disc for four times etc. While being so, the petitioner has been falsely implicated by CBI in RC MA1 2013A 0013 on 22.03.2013 as an accused in FIR, based on a false and frivolous complaint preferred by someone who was envious of the steady growth in career, sincerity and the appreciation gained by the petitioner over a period of time.

4.It is the further case of the petitioner that a case was registered by the CBI in RC MA1 2013A 0013 against the petitioner and two others under Section 120-B IPC and Section 7, 12 and 13(2) r/w Section 13 (1)(d) of the Prevention of Corruption Act, 1988 on

22.03.2013 and the petitioner was committed to the learned Principal Special Judge for CBI Cases in C.C.No.7 of 2014. The XII Additional CBI Court took cognizance of the case and summoned the petitioner to face the trial. After trial, the petitioner was convicted by the learned Special Judge for CBI Cases in C.C.No.7 of 2014 on 31.07.2018, against which the petitioner filed Criminal Appeal No.459 of 2018 before this Court and this Court vide order dated 21.08.2018 made in CrI.M.P.No.10311 of 2018 suspended the order passed by the learned Special Judge for CBI Cases in C.C.No.7 of 2014 till the disposal of the appeal.

5.It is the further case of the petitioner that the petitioner was suspended with immediate effect vide order 27.09.2018 based on the orders of the lower Court, unmindful of the orders passed by this Court on 21.08.2018. Thereafter, the third respondent issued show cause notice dated 17.10.2018 calling upon the petitioner to explain as to why an appropriate major penalty should not be imposed and the same was received by the petitioner on 29.10.2018. In reply to the show cause notice a representation was submitted by the petitioner on 12.12.2018 to the Director General of Police, CRPF. Challenging the said show cause notice, the present writ petition has been filed.

6.Mr.AR.L.Sundaresan, the learned Senior Counsel appearing for the petitioner would submit that vide order dated 21.08.2018 made in Crl.M.P.No.10311 of 2018, the order passed by the learned Special Judge for CBI Cases in C.C.No.7 of 2014 was suspended by this Court, however, without considering the same, the show cause notice was issued and would further submit that the show cause notice is liable to be quashed on the sole ground. He would further submit that the Authority who issued the show cause notice pre-determined the issue and the same is not permissible. Accordingly, he prayed for allowing the writ petition.

7.In support of his contentions, the learned Senior Counsel appearing for the petitioner relied upon the decision of the Hon'ble Apex Court reported in **(2006) 12 SCC 33 (Siemens Limited Vs. State of Maharashtra and Others)**, the relevant portion of which reads as follows:

"9.Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been

without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause notice."

8.Per contra, the learned counsel appearing for the respondents would submit that based on the conviction order passed against the petitioner, the show cause notice was issued to the petitioner.

Further, as per Rule 19 of CCS (CCA) Rules, where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the Government servant may be given opportunity of making representation on the penalty proposed to be imposed before any order is made.

9.The learned counsel appearing for the respondents would further submit that in the present case, the petitioner was issued with show cause notice calling upon him to explain as to why an appropriate major penalty should not be imposed and the petitioner was asked to submit his explanation within fifteen days and hence the Authority has not pre-determined the issue. He would further submit that it is open to the petitioner to canvass all the issue before the competent Authority and without submitting his explanation and filing the writ petition is un-sustainable one.

10.In support of his contentions, the learned counsel appearing for the respondents relied upon the decision of the Hon'ble Apex Court reported in **(2001) 3 SCC 414 (Union of India and others Vs. Sunil Kumar Sarkar)**, the relevant portion of which reads as follows:

"8.The Division Bench also found

fault with the order of dismissal passed by the disciplinary authority on the ground that the same was solely based on the conviction suffered by the respondent in the Court Martial proceeding. The court in this regard held that the disciplinary authority had a pre-determined mind when he passed the order of dismissal. Here again, in our opinion, the Division Bench did not take into consideration Rule 19 of the Central Rules which contemplates that if any penalty is imposed on a Government servant on his conviction in a criminal charge, the disciplinary authority can make such order as it deems fit (dismissal from service is one such order contemplated under Rule 19) on initiating disciplinary proceedings and after giving the delinquent officer an opportunity of making a representation on the penalty proposed to be imposed. As a matter of fact, this type of disciplinary procedure is contemplated in the Constitution itself as could be seen in [Article 311\(2\)\(a\)](#). Rule 19 of the Central Rules is in conformity with the above provisions of the Constitution. This, as we see, is a

summary procedure provided to take disciplinary action against a Government servant who is already convicted in a criminal proceeding. The very foundation of imposing punishment under Rule 19 is that there should be a prior conviction on a criminal charge. Therefore, the question of having a pre-determined mind does not arise in such cases. All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show cause notice and reply to such show cause notice, if any, should be properly considered before making any order under this Rule. Of course, it will have to bear in mind the gravity of the conviction suffered by the Government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment. In the instant case, the disciplinary authority has followed the procedure laid down in Rule 19, hence, we cannot agree with the Division Bench that the said disciplinary authority had any pre-determined mind when it passed the order of dismissal."

11.Considering the facts and circumstances of the case, this Court refrains itself from discussing elaborately the facts of the case. The narrow issue involved in the present case is whether the competent Authority has power to issue show cause notice immediately after conviction of a Government servant under Rule 19 of the CCS (CCA) Rules.

12.Admittedly, the petitioner entered into the uniformed service in the year 1986 and was charged under Section 120-B IPC and Sections 7, 12 and 13(2) r/w Section 13 (1)(d) of the Prevention of Corruption Act and after investigation, case was registered against him. In the said case in C.C.No.7 of 2014, the petitioner was summoned to face the trial. After trial, the petitioner was convicted by the learned Special Judge for CBI Cases in C.C.No.7 of 2014 on 31.07.2018, against which the petitioner filed Criminal Appeal No.459 of 2018 before this Court and this Court vide order dated 21.08.2018 made in CrI.M.P.No.10311 of 2018 suspended the order passed by the learned Special Judge for CBI Cases in C.C.No.7 of 2014 till the disposal of the appeal.

13. Admittedly, the suspension order was issued on 27.09.2018 and thereafter the impugned show cause notice was issued on 17.10.2018 under Rule 19 of the CCS (CCA) Rules.

14. For better appreciation, Rule 19 of the CCS (CCA) Rules is extracted hereunder:

"19. Special Procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18---

where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

The Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i)]

15. On a perusal of the above Rule makes it clear that where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made. Hence, the impugned show cause notice has been rightly issued calling upon the petitioner to explain as to why an appropriate major penalty should not be imposed and the petitioner was asked to submit his explanation within fifteen days.

16. The Hon'ble Apex Court has dealt with similar issue and the learned counsel appearing for the respondents has rightly relied upon the decision of the Hon'ble Apex Court reported in **(2001) 3 SCC 414 (Union of India and others Vs. Sunil Kumar Sarkar)**. The above decision squarely apply to the present case.

17.The Hon'ble Apex Court in the case of **Shankar Dass v. Union of India**, reported in **(1985) 2 SCC 358** has held that what is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. In the present case, the respondent has been found guilty of corruption by a criminal court. Unless the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. If he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.

18.The Hon'ble Apex Court in the case of **Union of India v. Sunil Kumar Sarkar**, reported in **(2001) 3 SCC 414** has held that as a matter of fact, this type of disciplinary procedure is contemplated in the Constitution itself as could be seen in Article 311(2)(a). Rule 19 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 is in conformity with the above provisions of the Constitution. Thus this Court feels is a summary procedure provided to take disciplinary action against a Government servant who is already convicted in a criminal proceeding. The very foundation of imposing punishment under Rule 19 is that there should be a prior

conviction on a criminal charge. Therefore, the question of having a predetermined mind does not arise in such cases. All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show-cause notice and reply to such show-cause notice, if any, should be properly considered before making any order under this Rule.

19.Further, it is only a show cause notice and the show cause notice cannot be mechanically interfered with and it is for the Authorities to take a decision. However, it is open to the petitioner to file explanation before the respondent.

20.The writ petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.09.2019

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

- 1.The Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi.
- 2.The Director General of Police,
Directorate General of CRPF,
Ministry of Home Affairs,
Block No.1, CGO Complex,
Lodhi Road, New Delhi 110 003.
- 3.The Deputy Inspector General (CR & Vig.),
Directorate General of CRPF,
Ministry of Home Affairs,
Block No.1, CGO Complex,
Lodhi Road, New Delhi 110 003.



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M.DHANDAPANI,J.
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**Pre-delivery Order in
W.P.No.826 of 2019**

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