

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: June 23, 2021

+ W.P.(C) 12674/2019, C.M. Nos. 51744/2019 & 11951/2020

VINOD KUMAR KATARIA

..... Petitioner

Through: Mr. Bharat Singh, Adv.

versus

UOI AND ORS

..... Respondents

Through: Mr. Amit Mahajan, CGSC with
Mr. Kritagya Kumar Kait, Adv. for
UOI.
Mr. Yashpal Rangi, Adv. for R-2.

AND

+ W.P.(C) 4421/2020, CM Nos. 15923/2020 & 33264/2020

VINOD KUMAR KATARIA

..... Petitioner

Through: Mr. Bharat Singh, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Yashpal Rangi, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. At the outset I may state, vide this common order I shall decide, W.P.(C) 12674/2019 and connected applications as well

as W.P.(C) 4421/2020 and connected applications, as the petitioner is common in both the petitions and the issue raised in the petitions are interconnected.

W.P.(C) 12674/2019

2. This petition has been filed with the following prayers:

“A. Quash and set aside the impugned Officer order of respondents (CCRT) issued vide CCRT/11017/07/2019 (Pt)/895 and 896 Dated 26/11/2019 placed at Annexure P/1 (Colly), declaring as illegal, arbitrary and discriminatory.

B. Direct the respondents (MoC) to constitute committee on respondents (CCRT) to investigate the matter that under which authority respondents (CCRT) has issued this illegal, arbitrary and discriminatory Office Order of transfer and also take necessary disciplinary action against the respondents (CCRT) in accordance to CCS (Conduct) Rules.

C. Issue of Writ Order of Quo-warranto as under which authority Honaray Chairperson has power to promote to the post of Deputy Director to Director.

D. Issue a Writ Order of Prohibition to prohibit/stop the respondents to post out the petitioner from CCRT New Delhi to any other place of India as the W, P (C)-11592/2019 is sub judiced and pending before this Hon'ble Court, in the interest of Justice.

E. Issue a Writ Order of Mandamus, quo-warranto and prohibition or any other Writ/Directions/Order as may be deemed just and proper in the facts and circumstances of the case.

F. Award Cost.”

3. The petitioner, a post graduate was appointed to the post of Administrative Officer in Group ‘B’ service in Pay Band-2 (Rs. 9300-34800 + Grade Pay Rs. 4600/- w.e.f September 12, 2011 (‘Appointment Letter’, for short) in Centre for Cultural Resources & Training (‘CCRT’, for short), New Delhi under the Aegis of Ministry

of Culture, respondent No.1.

4. The petitioner herein has preferred the present petition for quashing and setting aside the impugned Office Order issued by respondent No. 2 (Director, CCRT) vide CCRT/11017/07/2019 (Pt)/895 AND896 dated November 26, 2019 ('impugned order', for short). It is the case of the petitioner that vide the impugned order, the petitioner has been transferred to the CCRT Regional Centre, Udaipur where there is no sanctioned post of an Administrative Officer.

5. It is the case of the petitioner that the impugned order has been passed in a complete *malafide* manner as the petitioner had already preferred a writ petition bearing W.P. (C) 1159/2019 against the respondent No.2/CCRT for pay scale anomaly and had also filed a complaint on November 25, 2019, addressed to the PMO.

6. That after the impugned order was issued, the petitioner had preferred a representation to the respondent No.2/CCRT on November 26, 2019 thereby seeking a) copy of policy page for existence of CCRT Regional Centre, Udaipur in accordance to Ministry of Culture; and (b) copy of authorized/sanctioned post of Administrative Officer that exist in CCRT Regional Centre, Udaipur.

7. It is his case that, instead of the providing the requisite information, the respondent No.2/ CCRT threatened the petitioner by reply dated November 26, 2019, wherein it is stated that *instead of complying with the Transfer Order dated 26.11.2019, you are raising frivolous objections. It will be in your interest to proceed with the Transfer Order and do not indulge in any unwarranted correspondence.*

8. It is stated by the petitioner that the impugned order is totally illegal, unjust and arbitrary.

9. Counter-affidavit is filed by respondent No. 2/CCRT. It is stated that the impugned order is purely administrative in nature, issued owing to exigencies of work and that there exists no malafide or illegality attached with the impugned order.

10. It is stated that the respondent No. 2/CCRT being an autonomous body under the administrative control of the Ministry of Culture, all appointments are governed by the rules framed by the apex body of the respondent keeping in mind the specific requirements of the organization.

11. It is stated that as per the Appointment Letter of the petitioner, the appointment carries with it the liability to serve in any part of the country as stated in paragraph 3 of the said letter. The contents were duly accepted by the petitioner while accepting the offer letter and vide the joining report dated September 12, 2011.

12. It is stated by the respondent No.2/CCRT that it has three Regional Centers at Udaipur, Hyderabad and Guwahati. For better management, owing to need based requirement, and looking at the exigencies of the work, CCRT vide Office Order No. CCRT/II017/12/201S/2784 dated May 21, 2019 circulated a Transfer Policy to all the Officers/ staff ('Transfer Policy', for short).

13. Further, it is stated that a request from the consultant of CCRT of Regional Centre, Udaipur was received on November 25, 2019 seeking administrative support by posting / transferring an experienced person conversant with administrative matters at the Regional Centre to supervise the under construction building of CCRT, liaison with

CPWD Engineers, upkeep of the rented buildings of CCRT, Housekeeping jobs, tender preparation work for catering, security services etc. It was on this basis that the impugned order was passed transferring the petitioner to the CCRT Regional Centre, Udaipur.

14. It is also stated that the petitioner after joining his new duty place, instead of attending to his administrative duties started raising irrelevant issues and sought policy page of the CCRT, Regional Centre Udaipur which is administratively wrong and insubordination by the petitioner.

15. Rejoinder is duly filed by the petitioner reiterating his stand in the petition. Additionally, it is stated that no administrative officer has ever looked after field jobs and it is field officer (Total strength 10)/ Account officer (Total strength 4) who used to look after such type of job in the past. In fact, petitioner stated that through an RTI application filed, he has received information that 10 posts for Field Officers are available at CCRT. Further, it is also stated that respondent no. 2 has *malafidely* freezed the HRA and transport allowance without giving any notice. Petitioner has not been provided with accommodation and food facility at CCRTRC, Udaipur. It is also stated that the petitioner never allowed respondent No.2's Director to do any wrong act, any financial irregularity/scam as it has happened in past, hence the respondent no. 2's Director who himself is an accused in the past scam, with the help of Deputy Director is relying on the transfer policy to throw out the petitioner.

16. It is also stated by the petitioner that as per the DoPT Rules, if there is no sanctioned post then attachment can be done for less than 90 days that too on rotational basis.

C.M. No. 11951/2020

17. It is pertinent to note that in the meantime the petitioner had also filed another writ petition bearing W.P.(C) 3233/2020 owing to the onset of covid-19 pandemic seeking a direction to the CCRT to allow the petitioner to work from CCRT, New Delhi after lockdown. Since the present petition was already pending adjudication, the Court vide Order dated May 22, 2020 dismissed the said petition as withdrawn with liberty to the petitioner to move an appropriate application in the present petition. In pursuance thereof, the petitioner has preferred the present application bearing C.M. No. 11951/2020.

18. This application is filed with the following prayers:

“(A) In view of the above-mentioned facts and circumstances, it is most humbly prayed that the transfer orders dated 26.11.2019 may be pleased be set aside in the interest of justice. As respondents are provided sufficient time by Hon'ble High Court to file counter-affidavit/reply within six weeks but till date respondents have not filed the reply this clears that respondents (CCRT) transfer order is wholly illegal, mala fide and need to be set aside with heavy cost based on the above facts and grounds in the interest of Justice.

(B) Special enquiry order may be issued to Central Vigilance Commission to investigate the above said facts regarding Respondents (CCRT).

(C) To carry out the work of regional centres of respondents (CCRT), rotational policy is to be framed in consultation of respondents (MoC) through DoPT for Deputy Director, Field Officer and Accounts Officer. And for administrative and financial work assistance, Deputy Director (Finance), Deputy Director (Admin) and Administrative Officer may have frequent visit to regional centers equally on rotation basis”.

19. It is stated in the present application that the respondent No. 1 and respondent No.2/CCRT having not filed the reply/counter

affidavit to the present petition even after the passage of 20 weeks, over and above the stipulated time of 6 weeks as granted vide the order December 02, 2019, is itself indicative of the fact the impugned order has been passed illegally and capriciously.

20. It is stated by the petitioner that the present Director of respondent No.2/CCRT, is part of a Scam of which investigation is being conducted by the Delhi Police. It is also stated by the petitioner that the Director of respondent No.2/CCRT has made transfers without any concept of rotation and he intentionally included the Administrative Officer post knowing very well that no such post exists in the Regional Centres of respondent No.2/CCRT. Moreover, it is also stated that All India Service liability exists where post is also available on all India basis, hence Rules 46(1) & (2) of the Service Bye-Laws of CCRT mentioned in the Transfer Policy is not applicable to Administrative Officer post.

21. It is also stated that the petitioner reported at the CCRT Regional Centre, Udaipur and stayed there from December 9, 2020 to February 28, 2020. According to the petitioner, he found that no post of Administrative Officer exists and also found that there is no work relating to administrative matters and the same were being taken up by the Head Quarters CCRT, Delhi. Even advertisements were published by the respondent No.2/CCRT for four posts of Accounts Officer with one post indicated at CCRT Regional Centre, Udaipur. This, according to the petitioner, clearly indicates the *malafide* intention of the respondent No.2 in issuing the impugned order.

22. It is also stated that the petitioner has sought various information under the Right to Information Act, 2005 ('RTI Act', for

short) on the appointment of the Director of respondent No. 2 CCRT and has stated that his appointment is illegal as no vigilance clearance was provided. Further, by relying upon information received under the RTI Act, Dr. Rahul Kumar had given technical resignation in CCRT on July 01, 2019 and was relieved on July 04, 2019 (AN) to join IGNCA as Research Officer under Direct Recruitment vide order CCRT/11012/1/2010/719/3858 dated July 04, 2019 without any lien. Thereafter, CCRT had issued him a letter vide CCRT/11011/02/2011 dated November 25, 2019 stating that on the recommendation of DPC and with the approval of Competent Authority Dr. Rahul Kumar is promoted to the post of Deputy Director (General) w.e.f. November 25, 2019. Dr. Rahul Kumar is required to join as Field Officer in CCRT before joining as Deputy Director (General). Dr. Rahul Kumar has not kept lien on the post of Research Officer in IGNCA as per information received under RTI (IGNCA) which shows the malafide intention of respondent (CCRT). Thus, it is stated Dr. Rahul Kumar has no right of promotion because he is not the internal candidate of CCRT at the time of promotion and lien was not retained by him on Field Officer post and moreover IGNCA has not issued any letter that he cannot be absorbed in IGNCA due to his inefficiency etc .by overlooking the guidelines of DoPT issued on Technical Resignation & Lien vide OM No. 28020/1/2010- Estt (C) dated August 17, 2016.

23. Reply is duly filed to the application by the respondent No.2/CCRT. On the maintainability of the application, it is stated by respondent No.2 that the prayers made in the application are beyond the prayers as made in the main writ petition. It is also stated the petitioner having been posted at Udaipur and performing his duties

there, the application is infructuous.

24. It is stated by the respondent No.2/CCRT that the scholarship scam was a mischief played by a contractual employee and due to the negligence of some officials of the Centre. The matter was reported to the police in 2017 and action including the arrest of the persons has already taken. Substantial amount of money stands recovered. The allegations as made by the petitioner against the current Director of respondent No.2/CCRT, Rishi Kumar Vashist, is mala fide as he was nowhere involved in the matter. The police have given him and all other officials a clean chit and have made them witness to the crime committed by the contractual employee.

25. Rejoinder is duly filed by the petitioner, reiterating his claim in the application and writ petition.

W.P (C) 4421/2020

26. In the back ground of the facts as noted above in W.P (C) 12674/2019 and connected application being C.M 11951/2019, it is stated by the petitioner that respondent No. 2 issued a Suspension Order CCRT/11022/04/2020/221 dated July 03, 2020 and a Memorandum along with Articles of Charge vide CCRT/11022/04/2020/223 dated July 03, 2020.

27. This petition is filed by the petitioner with the following prayers:

“A. Quash and set aside the impugned Suspension Order of respondents (CCRT) issued vide CCRT/11022/04/2020/221 dated 03.07.2020 placed at Annexure P/1 and Memorandum along with Article of Charge of respondents (CCRT) issued vide CCRT/11022/04/2020/223 dated 03.07.2020 placed at Annexure P/2 , declaring as illegal, arbitrary and discriminatory. (P.No. 64-66 and 67-144)

B. Direct the respondents (MoC) to constitute a committee to verify the veracity of work carried out by respondents (CCRT) during the period of Sh. Rishi Kumar Vashist, Director of respondents (CCRT) since February, 2019 to till date.

C. Issue the Order of Prohibition to prohibit/stop the respondents (CCRT) to frame various Article of Charge as stated in Memorandum issued vide CCRT/11022/04/2020/223 dated 03.07.2020 placed at Annexure P/2 in the interest of Justice, as petitioner declares that he has filled two Writ Petition in Hon'ble High Court at Delhi vide W.P (C)- 11592/2019 and W.P (C)-12674/2019 relates to pay scale and mala fide transfer respectively . Both Writ Petition are pending for adjudication. The petitioner has filed case under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 in Hon'ble District Court at Dwarka vide CT Case 1539/2019 against Sh. Rishi Kumar Vashist & Anr, case is pending for adjudication. The petitioner has filed complaint against Sh. Rishi Kumar Vashist, Director of respondents (CCRT) to Hon'ble National Commission for Scheduled Castes (NCSC), the commission has registered the complaint of petitioner for Discrimination and Service Harassment vide Case No. 1740/30/3/2019-1513 and the matter is still under process. (P.No. 64-66 and 67-144)

D. Issue a Writ Order of Mandamus, or any other Writ/Directions/Order as may be deemed just and proper in the

facts and circumstances of the case.

E. Award Cost. ”

28. It is stated by the petitioner that the respondents have started a flimsy enquiry as per the Central Civil Service (Classification, Control and Appeals) Rules, 1965 ('Rules of 1965', for short) and Service Bye-Laws of CCRT/respondent No.2, in order to protect themselves from the allegations in the complaints filed by the petitioner against

Director of respondent No.2 and appointed V. Renganathan, IPS (Retd.) as the Enquiry Officer who is a practicing Advocate. It is stated that no show cause notice whatsoever was issued to petitioner for enquiry and the Office Memorandum vide CCRT/11022/02/2019/6311 dated August 16, 2019 was issued through a contractual employee intimating the petitioner to be present before the Enquiry Officer on August 19, 2019.

29. I deem it appropriate to reproduce the Articles of Charge framed against the petitioner as noted at page 74 of the petition which reads as under:

“Statement of Article of Charges framed against Shri Vinod Kumar Kataria, Administrative Officer presently posted at CCRT, Regional Centre Udaipur:

Article of Charge I

Shri Vinod Kumar Kataria, Administrative Officer vide Office Order No, CCRT/11017/07/2019(Pt.)/895 dated 26.11.2019 was transferred to CCRT Regional Centre, Udaipur, Shri Vinod Kumar Kataria joined Regional Centre on 09.12.2019 but he did not provide his local address for office record. To get the local address of Shri Kataria a Memo No. CCRT/11012/02/2011/87/8006 on 26.12.2019 was issued to him.

Shri Vinod Kumar Kataria, Administrative Officer neither responded nor provided the desired information however Consultant, Regional Centre, Udaipur vide his mail dated 02.01.2020 had informed that Shri Vinod Kumar Kataria, Administrative Officer from the date of his joining i.e. 09.12.2020 was staying in the premises of CCRT Regional Centre, Udaipur without approval of Competent Authority.

Shri Vinod Kumar Kataria has thus hide the information regarding his stay in the premises of CCRT Regional Centre, Udaipur to continue to avail the HRA from CCRT. Thus, Shri Kataria has violated the provisions of Rule 47 (1) & (2) of the CCRT Service Byelaws and Rule 3 (i),(ii),(iii),(vi), (xviii) & (xix) of the CCS

(Conduct) Rules, 1964 as amended.

Article of Charge 2

Shri Vinod Kumar Kataria, Administrative Officer vide his application had applied for one day commuted leave for 29.01.2019 on medical ground. The medical certificate submitted by Shri Kataria of 29.01.2019 issued by Dr, Falgani Thakkar (BAMS), Registration No. DBCP/A/7063 suggests two days rest for 29.01.2019 and 30.01.2019 and fit for duties from 31.01,2019. However, Shri Kataria joined CCRT on 30.01.2019 against the advice of the Doctor. Thus, Shri Vinod Kumar Kataria with mala fide intention had submitted his medical certificate for illness that suggests either the medical certificate issued by the Doctor is fake or the ground of medical for leave is fake which is against the Conduct and leave Rules of the Government. Accordingly Shri Vinod Kumar Kataria, Administrative Officer was asked to explain the reasons vide Office Memorandum NoCCRT/11012/02/2011/115 dated 20.01. 2020, Shri Kataria willfully and with mala fide intention used the medical certificate for availing commuted leave and thereby to cheat the Competent Authority, CCRT Thus, Shri Kataria has violated the provisions of Rule 47 (a) 8c (2) of the CCRT Service Dye-laws and Rule 3 (i), (ii, (iii), (vi), (xviii) & (xix) of the CCS {Conduct) Rules, 1964 as amended.

Article of Charge 3

Shri Vinod Kumar Kataria, Administrative Officer vide letter No, CCRT/110^2/02/2011/965 dated 27.01.2020 was advised to sign as witness on the lease Agreement with the Landlord pertaining to the buildings of CCRT Regional Centre, Udaipur, However, Shri Vinod Kumar Kataria, Administrative officer vide his letter dated 30.01.2020 refused to sign as a witness on the Lease Agreement and stated that he has filed a Writ Petition against the Transfer Order. Therefore, it will be contrary for him if he signs as witness. Shri Vinod Kumar Kataria was transferred to CCRT Regional Centre, Udaipur on 26.11,2019 to attend administrative work of the Centre. Since preparation of Lease Agreement including signing as a witness on the lease Agreement is an administrative work which is supposed to be taken care of by him. By refusing to sign as a witness in the Lease Agreement, being an Administrative

Officer, he has disobeyed the instructions / order s of the Competent Authority that amounts to subordination. Thus, Shri Kataria has violated the provisions of Rule 47 (1) &(2) of the CCRT Service Bye -laws and Rule 3 (i),(ii), (iii),(vi), (xviii) & (xix) of the CCS (Conduct) Rules, 1964 as amended.

Article of Charge 4

Shri Vinod Kumar Kataria, Administrative Officer vide his Earned Leave application dated 31.12.2019 from 06.01.2020 to 17 01.2020 (12 days) 4th and 5 th January, 2020 prefix and 18th & 19th January, 2020 as suffix had proceeded on leave and left Regional Centre, Udaipur without the approval of Competent Authority. Further, as per Note CCRT/RC/UDI/1112/12/2019/Hi-1133 dated 07th January, 2020 provided by CCRT Regional Centre, Udaipur, Shri Vinod Kumar Kataria had directed the official of Regional Centre not to forward his Earned Leave application to Headquarter, New Delhi for approval of Competent Authority till he joins office back. Shri Vinod Kumar Kataria with mala fide intention directed the official of Regional Centre not to forward his Earned Leave application to CCRT Headquarter, New Delhi for approval of Competent Authority till he join office back. Thus, Shri. Vinod Kumar Kataria has violated the provisions of Rule 47 (1) & (2) of the CCRT Service Bye -laws and Rule 3 (i), (ii), (iii), (vi),(xviii) & (xix) of the CCS (Conduct) Rules, 1964 as amended.

Article of Charge 5

Shri. Vinod Kumar Kataria, Administrative Officer while working in General Administration Section; CCRT did not attend his official duty properly that resulted in the huge accumulation of water bill, Due to irresponsible attitude of Shri. Kataria, CCRT faced problems and a huge penalty for non-payment of Water Bill was imposed by Delhi Jal Board. Further, Shri Kataria during his tenure in General Administration purchased a Water Meter at the cost 25,000/- on 18,12.2018 utilizing Rule 154 of GFR, 2017. The water meter was available in the market for Rs.10,800/- for which quotation/rate was obtained by Shri Katana and the approval of Competent Authority was taken on 15.11.2018. After purchase of water meter and installation of the same at CCRT premises, Shri

Katana did not submit the Meter Testing Report in Delhi Jal Board and the records of Delhi Jal Board continued to show as stop meter in the records of Delhi Jal Board for CCRT from December 2018 to December 2019. Due to non-submission of Meter Testing Report in Delhi Jal Board by Shri Vinod Kumar Kataria, CCRT faced huge penalty and the Bill of the water went up to more than Rs. 98.93 Lakhs. The meter purchased by Shri Katana from M/S R.K. Saini & Co., H.No. 218, Haii Nagat Ashram, New Delhi-110014 at the cost of Rs. 25,000/- was available for Rs. 10,800/- in the nearby shop at Sector - 7, Dwarka for which the approval of Competent Authority was taken. This suggests that Shri Vinod Kumar Kataria with mala fide intention and for his financial gains had purchased the meter at a very high cost from the Agency located at a distant place instead of from the agency located at nearby place of CCRT. Thus, Shri Kataria has violated the provisions of Rule 47 (1) & (2) of the CCRT Service Byelaws and Rule 3 (i), (ii), (iii), (vi), (viii) & (xix) of the CCS (Conduct) Rules, 1964 as amended.

Article of Charge 6

Shri Vinod Kumar Kataria, Administrative Officer and being buyer / purchaser under GeM by CCRT moved a proposal for the purchase of five (05) items by quoting Rule 149 of GFR 2017. The proposal was approved by the Competent Authority such as HP Toner 36A (02 Nos.), HP Toner 88A (04 Nos.), TVS gold Keyboard (01 No.), HP Toner 49A (02 Nos.) and HP Toner 12A (01 No.) as per Rule 149 of GFR 2017 and on Page No. 5/Note on File No. CCRT/31014/01/2019 on 05.03.2019. Accordingly, for the purchase of the goods Shri Kataria placed an Order in GeM on 06.03.2019 and he further mentioned that expected delivery in GeM is 15 days w.e.f. 07.03.2019. The total expenditure involved was of Rs. 37,946/-. Shri. Kataria in his note on page No. 4/N of the same file has mentioned that the rates of items mentioned at Note No. 3/N are added in the shopping Cart In GeM Portal. The rates are valid for 10 days only. However, Shri Kataria instead of approved five (05) items procured only three (03) items instead of five (05) items for which approval was taken such as 12A Toner Cartridge (01 No.), Richprint 88A Toner Cartridge – (04 Nos.) and Cartridge 36A Toner (02 Nos.) but on higher rates at a cost of Rs. 27,949.79/- mentioning that items were out of stock thus rate of the

items increased. But, Shri Kataria did not seek the approval of the Competent authority before procuring the items on the higher rates. Further, he did not mention anything about the remaining two (02) Items for which the approval of the Competent Authority had already been taken. As per norms for procurement through GeM the rates cannot be increased by the vendor to whom order has been placed, if anything happens regarding the non-availability of items the Vendor has to seek the approval of the organization that placed the order of purchase of items. Shri Kataria with mala fide intentions manipulated rates of items for his personal financial gains and causing loss to CCRT. Thus, Shri Kataria has violated the provisions of Rule 47 (1) & (2) of the CCRT Service Bye-laws and Rule 3 (i),(ii),(iii),(vi),(xviii) & (xix) of the CCS (Conduct) Rules, 1964 as amended.

Article of Charge 7

Shri Vinod Kumar Kataria, Administrative Officer, CCRT, Ministry of Culture while posted in General Administration Division/Section, CCRT has committed gross financial and administrative irregularities by disobeying his duties and responsibilities as Administrative Officer. With respect to financial and administrative irregularities. CCRT had received complaints from vendors and staff of CCRT against Shri Kataria with serious allegations such as demanding bribe and other favour from Vendors and for complaints of misconduct from the staff of CCRT. Keeping in view, the complaints made by Vendors and staff of CCRT, it was decided to conduct an enquiry to check the veracity of the complaints. The Enquiry Officer after conducting the Preliminary Enquiry submitted its report stating that Shri Kataria has committed financial and administrative irregularities including harassment and insubordination with mala fide intention and for his personal gain Shri Kataria has violated the provisions of Rule 47 (1) & (2) of the CCRT Service Bye-laws and Rule 3 (i),(ii),(iii),(vi),(xviii) & (xix) of the CCS (Conduct) Rules, 1964 as amended.

Article of Charge 8

Shri Vinod Kumar Kataria, Administrative Officer, CCRT, Ministry of Culture while posted In General Administration Division/Section, CCRT has committed gross financial and

administrative Irregularities by disobeying his duties and responsibilities as Administrative Officer. While working In General Administration Division/Section, CCRT Shri. Katarla with the help of Shri Braham Prakash, IDC, CCRT in File No. 11014/4/2018 has moved a proposal for the purchase of five (05) stationary items for CCRT at the estimated cost of Rs. 47,300/- on 30.08.2018. Shri Katarla misrepresented the facts in his note that GeM Portal shall be utilised by the Govt. Buyers for direct online purchase upto Rs. 50,000/- through any of the available suppliers on the GeM as per Rule of 149 of GFR. This statement was false with mala fide intention as CCRT was not registered in GeM, when the proposed purchase of items through online was done. Shri Katarla through this misrepresentation of fact with mala fide intentions for his personal gains and causing loss to CCRT manipulated the purchase of items for the estimated expenditure of Rs. 47,300/- 4 GST from his favoured Agency i.e. M/s Chhavi Trading Company, S-128, Param Puri, Uttam Nagar, New Delhi. Thus, Shri Katarla has violated the provisions of Rule 47 (1) & (2) of the CCRT Service Bye-laws and Rule 3 (i), (ii), (iii), (vi), (xviii) & (xix) of the CCS (Conduct) Rules, 1964 as amended.

30. It is stated that on August 19, 2019, petitioner appeared before the Enquiry Officer and apprised him of complaint against Rishi Kumar Vashist, Director of respondent No. 2 (CCRT) under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. Petitioner also requested for copies of complaints received from the officials and vendors of CCRT against petitioner, so that reply can be filed within 10 days from the receipt of the same. The request was denied by the Enquiry Officer vide communication dated August 22, 2019. The petitioner thereafter, filed the reply to the impugned Suspension Order on July 04, 2020 and Memorandum with Articles of Charge on July 06, 2020.

31. It is stated by the petitioner that the contents of the Suspension Order are concocted and flimsy as the respondent No. 2/CCRT is not

empowered to issue the impugned Suspension Order under Rule (10)(1) of the Rules of 1965, as the Officer/Director is under investigation under the Prevention of Corruption Act, 1988 and as per the said Rule the Officer is also to be put under Suspension from the date of investigation till the date the same is completed. This being the law, in the case of the Director of CCRT, no enquiry whatsoever is ordered by the CCRT or even by the Ministry of Culture. Moreover, it is stated that the Suspension Order is issued in a planned manner so that the petitioner's right for the post of Deputy Director (Administration) could be wiped off as he is the lone internal candidate being an Administrative Officer who meets the qualification requirements of the post. The Director of CCRT/respondent No.2 has initiated the enquiry at New Delhi after petitioner filed complaints and Court Cases against him and CCRT. To save himself from the petitioner's complaints and various Court Cases, Rishi Kumar Vashist, Director of CCRT/respondent No.2 has started this enquiry. The Suspension Order is issued with malafide intention in planned manner so that respondent No.2/CCRT can recruit Deputy Director (Administration) post as per his whims and fancies.

32. It is further stated that contents of the Memorandum are also ill founded as CCRT is an organization registered under the Societies Registration Act, 1860 and working under aegis of Ministry of Culture and therefore Rule 2(f) of the Rules of 1965 applies to only those establishments or organisations which are declared by the President by a notification in the Official Gazette. In other words, it is the stand of the petitioner that it is on the respondent No.2/ CCRT to establish being notified in the Official Gazette, the Rules of 1965

applies on the employees of respondent No.2/CCRT.

33. On the contents of Articles of Charge 1, it is stated that when the petitioner was transferred to CCRT Regional Centre, Udaipur, no written details of exigencies of work was given to the petitioner. Further, it is stated that petitioner being an administrative officer has right to ask information from respondent No.2/CCRT as to the existence of sanctioned post of Administrative Officer at regional centre, CCRT, Udaipur and its various regional centres and policy page on existence of regional centre, CCRT, Udaipur where petitioner is transferred to show there is no violation of Service Bye-Laws of CCRT and CCS (Conduct) Rules by petitioner. In fact, it is stated by the petitioner that the Transfer Policy that never existed in various regional centres violate the Service Bye-Law of CCRT and CCS (Conduct) Rules, 1964. It is stated that the petitioner has filed complaint in National Commission for Schedules Castes (NCSC), SHO, DCP and in District Court Dwarka for atrocities and harassment done by the Director of respondent No.2/ CCRT.

34. It is stated that the Enquiry Officer was appointed thereafter without any notice and in fact he is a practicing lawyer which strikes at the root of Rule 14 (8)(a) of the Rules of 1965. It is also stated that complaints being subjudice in respective forums, the action against the petitioner is in violation of Service-Bye-Laws.

35. It is also stated by the petitioner that he was transferred to the CCRT Regional Centre where sanctioned post does not exist and status accommodation was not granted to him. On Article 1 of the charge sheet which alleges petitioner claimed HRA benefits even while staying in the premises; it is stated that temporary arrangement

for accommodation was made by the respondents, however the petitioner was in search of alternate accommodation. It was when he was searching alternate accommodation that the respondent/CCRT issued the Memo at his local address on December 29, 2019. It is also stated by him that he has already paid advance for his alternate accommodation which was not conveyed by the Consultant to the respondents. Moreover, it is stated by the petitioner that the petitioner had in fact submitted information to the respondent No.2/CCRT regarding his local address at Udaipur.

36. On Article 2 of the charge sheet where the petitioner was alleged to have submitted a false medical certificate, the same is also denied.

37. It is stated by the petitioner that Article 3 and 4 of the charge sheet are also false and flimsy. On Article 3 it is stated that after scrutiny of the lease agreement and file of the hired building, the petitioner had given his remarks on various shortcoming noticed in file that it is hired on rent by respondent (CCRT) for CCRT Regional Centre Udaipur, without clearance from local authorities for conducting training in residential area, even mess is running in basement without any fire clearance, conditions of lease agreement are not as per Law etc, Instead of taking any action respondent (CCRT) start pressurizing petitioner to sign the wrong lease agreement of the rented building. Moreover respondent (CCRT) has not paid the rent of the building to owner for approximately six to seven months that comes in lakhs. It is also stated that the Lease Agreement of the rented building is prepared and drafted by the respondent (CCRT) at New Delhi. This act of respondent (CCRT) is in clear violation of Service

Bye-Laws of CCRT and CCS (Conduct) Rules, that respondent (CCRT) quoted for the petitioner.

38. The petitioner has also denied the Article 5. On Article 6 of the Memorandum, it is stated that initial sanction was accorded by the Competent Authority of respondent (CCRT). Petitioner was made buyer/consignee by respondent (CCRT) for items whose demands received from various sections, so liability of certificate for items lies on sections that had put the demand.

39. It is the case of the petitioner on Article 7 of the Memorandum that he has already filed a complaint to the Chairperson of respondent (CCRT), Chairman National Commission for Scheduled Castes (NCSC), SHO, DCP and in District Court Dwarka for atrocities and harassment done by Rishi Kumar Vashist, Director of respondent (CCRT). It is stated that the respondent has appointed V. Renganathan, IPS (Retd .) as Enquiry Officer who is a practicing Advocate, without any Notice, is against the Rule-14 (8)(a) of the Rules of 1965 and the matter is already subjudiced in the respective forum. Further, Rishi Kumar Vashist, Director of respondent (CCRT) with malafide intention got made a concocted complaint through vendor and staff those are very close to him, around 11 and 12 June, 2019 that clearly shows the malafide intention of Rishi Kumar Vashist, and also a proof that he can go to any level to harass and humiliate the petitioner.

40. Further on Charge 8 of the Memorandum, it is stated by the petitioner that the petitioner has procured the items after the approval of the Ex-Director of respondent (CCRT) and that the proposal was put up by the care taker of the store and the petitioner being and

administrative official had given his remarks on the file. It is also stated that later Ex-Director of respondent (CCRT) had given approval after seeking clarification. It is also stated that with the passage of time, the Director of respondent (CCRT) has tampered with the documents on the file and made concocted flimsy story to make wrong allegation against the petitioner.

41. It is stated by the petitioner that the order of suspension is not immune from judicial scrutiny under Article 226 of the Constitution. In this regard reliance has been placed on the Judgment in the case of ***State of Kerala v. K.C. George, 1984(1) LLJ 512***, wherein a Division Bench of the Kerala High Court upheld the order of a learned Single Judge quashing the order of suspension.

42. It is also stated that the continuous harassment by the Director of respondent (CCRT) resulted in the petitioner giving complaint to various Authorities and Courts as mentioned in paragraph 39. Therefore, according to him the impugned orders are aimed at harassing and causing damage to the petitioner. Reliance is also placed on ***Dipankar Sengupta v. UBI & Ors., 1999 (1) LLJ 208***, to contend that the Court shall confine judicial review in disciplinary proceedings in cases of illegality, irrationality or procedural impropriety.

43. A counter-affidavit has been duly filed by the respondent No.2. It is stated by respondent No.2 that as on date the petitioner is an unauthorised absentee and an absconder who has not joined the place of his posting as is mentioned in the suspension order and has illegally left Udaipur Regional Office without any valid authority or sanction. Moreover, it is stated that since the petitioner has not been reporting to the headquarters in Delhi from the date he has been

suspended, no work no pay rule shall be applicable to him, making the petition, liable to rejected and/or dismissed.

44. It is also stated that the writ petition involves disputed facts which cannot be adjudicated by this Court under Article 226 of the Constitution. It is further stated that the complaints preferred by the petitioner against the earlier Director of respondent No.2 and the current Director as well, are in no way connected to the passing of the impugned orders.

45. It is stated by the respondent/CCRT that suspension of an employee is purely an administrative function and not a quasi-judicial function. Further, suspension pending departmental enquiry against a government servant is not a punishment and the petitioner being governed by the Rules of 1965, Rule 10 of the same, enables an employee be placed under suspension in contemplation of departmental enquiry. It is also stated that the petitioner has failed to exhaust the remedy of appeal available to him under Rule 23(i) of the Rules of 1965 which itself can be a ground to reject the present petition as being premature.

46. Reliance has been placed by respondent No. 2 on the Apex Court judgment in the case of ***Secretary, Ministry of Defence and ors. v. Prabhas Chandra Mirdha, 2012 (11) SCC 565***, to contend that a writ petition ordinarily 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.

47. On the plea of non-applicability of the Rules of 1965, it is stated that respondent No.2 is a society under the aegis of Ministry of Culture with its own Memorandum of Association and Rules &

Regulations. The chairperson of the society is appointed by the Government of India. In the year 1979, respondent No. 2 framed its own service regulations which are known as “Centre for Cultural Resources and Training (Service) Regulations”. In Rule 58A of the Service Bye-laws, it is stated that *“in respect of any matters not specifically provided for in these rules relating to Conduct, Discipline, Appeal, and Review the relevant provisions contained in the CCS(CCA) Rules, 1965 as amended from time to time shall apply mutatis mutandis to employees of the Centre.”*

48. It is stated that the petitioner was issued three Office memorandums dated November 08, 2012, February 10, 2016 and February 23, 2016. Besides on the basis of the fact-finding Enquiry Report by the Enquiry Officer and as per the report of M/s Truth Labs in Forensic examination of Hard Disk of the computer used by the petitioner while posted at CCRT, HQ, New Delhi, it has been established that the petitioner has impersonated by filing various complaints in the name of different persons against senior officers of the organization just to defame and malign their image with a hidden agenda.

49. That apart it is stated that the petitioner’s plea that the Director is not the competent authority to pass the suspension order, it is stated that as per Rule 10(1) of the Rules of 1965, the appointing authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by special or general order, may place a government servant under Suspension. It is stated that the even after the prayers made by the petitioner vide CM No.15923/2020 for stay

of the suspension order as well as treating his headquarter as New Delhi was not acceded to by this Court, the petitioner did not join the place of work at Udaipur. Further, it is the case of the petitioner that merely passing of an order of suspension of government servant does not put an end to his service under the government and the relationship of master and servant does not cease. An officer under suspension cannot leave his headquarter without prior permission. In the present case, the petitioner is absent from his duties in Udaipur since July 4, 2020.

50. It is further stated that even though statement was made on behalf of the petitioner that he shall complete all formalities for receiving the subsistence allowance, even after the respondent No. 2 intimating the petitioner vide letter dated September, 24, 2020 to report at his headquarter within 3 days, the same was not complied with. Moreover, the suspension of the petitioner was reviewed by the Committee of CCRT and vide its order dated September 30, 2020 further extended the same for 30 more days. Respondent No. 2 has also stated that the petitioner is not cooperating in the departmental enquiry proceedings.

51. A rejoinder is duly filed by the petitioner, additionally alleging that the Suspension Order passed by Director of CCRT/respondent No.2 is in violation of OM dated January 24, 1963, which reads as ***“Officers performing current duties of a post cannot exercise statutory powers under the rules. The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or***

financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of parliament (i.e Income Tax Act) or Rules, Regulations and By-Laws made under various Articles of the Constitution (e.g Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc)”.

52. An affidavit is filed by respondent N0.2/CCRT vide CM. No 32512/2020 (for placing additional documents on record, which was duly allowed by this Court vide order dated December 11, 2020) , stating that the post of Director General was declared null and void by the concerned Ministry in a letter dated March 5, 2013 and that the Director of CCRT/respondent No.2 is the overall head of CCRT and thus appointing authority for all group ‘B’ posts. It is also stated that even the appointment of the petitioner was done by respondent No.2. This stand was also refuted by the petitioner by filing another rejoinder to the aforesaid affidavit.

53. Thereafter, petitioner also preferred an application being C.M. No.33624/2020 for stay of inquiry proceedings till the payment of subsistence allowance to the Petitioner.

SUBMISSIONS

54. It is stated by Mr. Bharat Singh, learned counsel appearing on behalf of the petitioner that the Director of respondent No.2/CCRT with malafide intention and to take revenge for a Writ Petition filed by the petitioner against pay scale anomaly and complaints, issued the impugned order to the petitioner when no sanctioned post of Administrative Officer exist at Regional Centre, CCRT, Udaipur, that

too without any written details of exigencies of work at CCRT Regional Centre, Udaipur, moreover transfer is made with immediate effect until further orders.

55. It is submitted by Mr. Singh that the after the impugned order of transfer was issued, the petitioner had preferred a representation to the respondent No.2/CCRT on November 26, 2019 thereby seeking a) copy of policy page for existence of CCRT Regional Centre, Udaipur in accordance to Ministry of Culture (b) copy of authorised/sanctioned post of Administrative Officer that exist in CCRT Regional Centre, Udaipur as approved by Ministry of Culture. Instead of providing the requisite information, the respondent No.2/CCRT threatened the petitioner by reply dated November 26, 2019 wherein it is stated that *instead of complying with the Transfer Order dated 26.11.2019, you are raising frivolous objections. It will be in your interest to proceed with the Transfer Order and do not indulge in any unwarranted correspondence.*

56. It is further submitted by him that respondent No.2/ CCRT has said in its Transfer Policy, all employees have all India transfer liability excluding 'Hostel Warden', which means there is only one sanctioned post of Hostel Warden and in the same way there is only one sanctioned post of 'Administrative Officer'. But with malafide intention Director of respondent No.2/CCRT transferred the petitioner to CCRT, Regional Centre, Udaipur.

57. It is submitted by Mr. Singh that respondent No.2/ CCRT has advertised the post of Accounts Officer for its CCRT Regional Centre, Udaipur which itself is self-explanatory that the post which exist is of Accounts Officer and not of Administrative Officer. That apart,

respondent No.2/CCRT had never taken up the matter for creation of post of Administrative Officer for its CCRT, Regional Centre, Udaipur with Ministry of Culture.

58. It is also submitted that respondent No.2/CCRT froze the allowances of petitioner of Delhi city and restricted it to other state (i.e., Udaipur) where no post of Administrative Officer exists. Petitioner has also submitted a complaint for improper salary to respondent No.2/CCRT.

59. Mr. Singh submitted that the haste with which the request from the Regional Centre, Udaipur, seeking administrative support by posting / transferring an experienced person conversant with administrative matters was acted upon by passing the impugned orders transferring the petitioner is also indicative of malafide intent on the part of the respondent No. 2.

60. Mr. Singh has relied upon the Apex Court judgment in the case of *Somesh Tiwari v. Union of India, 2009 (2) SCC 592*, wherein it is *inter-alia* held that administrative orders which are related to incident of service, should not be interfered with except in cases where malafide intent on part of the authority is proved.

61. On the principle of malice on facts, it is submitted by Mr. Singh that (a) there is no sanctioned post of Administrative Officer at CCRT, Regional Centre, Udaipur; (b) petitioner has filed Writ Petition in this Court being W.P.(C)-11592/2019 for pay scale anomaly; (c) complaint against Rishi Kumar Vashist, Director, CCRT in National Commission for Scheduled Castes (NCSC) under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 for Discrimination and Service Harassment vide Case

No.1740/30/3/2019-1513 and; (d) complaint against Rishi Kumar Vashist for appointment as Director to PMO and case under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 in the District Court at Dwarka vide CT Case 1539/2019, and all matters are sub-judice.

62. Similarly, on the principle of malice in law it is submitted by Mr. Singh when all matters are sub-judice, the respondent No.2 curtailed the allowances and lastly suspended the petitioner w.e.f July 03, 2020 (A/N) without waiting for an order of Court. Further, Suspension Order and Memorandum with Articles of Charge have been issued by the respondent No.2 both on the same date, i.e., July 03, 2020.

63. That apart, it is submitted by Mr. Singh that there exist no separate Establishment Section at respondent No.2/CCRT. Even, in RTI application preferred, respondent No.2 replied that there is one post of Administrative Officer but Dr. Rahul Kumar who is Deputy Director (General) of respondent No.2/CCRT has solemnly affirmed and declared that he is in charge of Establishment, when, there is no Establishment Section created. The stand of Dr. Rahul Kumar, Deputy Director (General) that he is in-charge of Establishment is ill founded. It is submitted that the scam which happened in respondent No.2, was brought to the notice of PMO, CVC, respondent No.1 by the petitioner and the conduct of petitioner is very clean, good, without any stigma. On other hand the Director and Deputy Director are involved in scholarship scam and many other cases.

64. Reliance is also placed by Mr. Singh on *Arvind Dattatraya Dhande v. State of Maharashtra, 1997 6 SCC 169*, wherein the

Supreme Court *inter alia* held that in view of unimpeachable and eloquent testimony of performance of duties, the transfer of an officer was held to be malafide exercise of power.

65. On the other hand, it is submitted by Mr. Amit Mahajan, learned counsel appearing on behalf of the respondents that the petition, bearing W.P.(C) 12674/2019 is not maintainable as the impugned order is issued purely for administrative reasons due to exigencies of the work and the same is not tainted by *malafide* or illegality as alleged by the petitioner.

66. According to Mr. Mahajan, as per the appointment letter, the appointment carries with it the liability to serve in any part of the country and the appointment was accepted by the petitioner vide his letter dated June 13, 2011 with all terms and conditions mentioned in the Appointment Letter. In fact, even in the joining report of the petitioner dated September 12, 2011, he had accepted all the terms and conditions of the appointment letter.

67. It is submitted by Mr. Mahajan that CCRT has three regional centres at Udaipur, Hyderabad and Guwahati and for the better management and need based requirement and looking at the exigencies of work, the CCRT vide Office Order No. CCRT/II017/12/201S/2784 dated May 21, 2019 had circulated a Transfer Policy to all the Officers/ staff.

68. It is further submitted by him that a request was in fact received by the concerned officer from CCRT, Regional Centre Udaipur vide letter dated November 25, 2019 seeking administrative support by posting / transferring an experienced person, conversant with administrative matters at the Regional Centre to supervise the under

construction building of CCRT, liaison with CPWD Engineers, upkeep of the rented buildings of CCRT, Housekeeping jobs, tender preparation work for catering, security services etc. According to him it was on the basis of this need raised from the CCRT Regional Centre, Udaipur and as per the Transfer Policy that the petitioner was transferred vide the impugned order.

69. That apart it is submitted by Mr. Mahajan that the petitioner after joining his new place of duty i.e., CCRT Regional Centre Udaipur, instead of attending to his administrative duties the petitioner started raising irrelevant issues and seeking policy page of CCRT, Regional Centre, Udaipur which is administratively wrong and insubordination by the Petitioner.

70. Further, by drawing the attention of the Court to various judicial proceedings initiated by the petitioner as stated in paragraph 39, Mr. Mahajan stated that suspension of an employee is purely an administrative function and not a quasi-judicial one and suspension pending enquiry is not a punishment. According to him as per Rule 10 of the Rules of 1965, an employee can be placed under suspension in contemplation of a departmental enquiry. Moreover, the petitioner has failed to point out any irregularity/illegality in the charge memo issued to him on July 3, 2020, the same day on which he was placed under suspension. It is also submitted by Mr. Mahajan that the petitioner has even failed to exhaust the remedy of appeal available to him under Rule 23(i) of the Rules of 1965.

71. By relying upon the Apex Court judgment in ***Secretary, Ministry of Defence and Ors. v. Prabhas Chandra Mirdha, 2012 (11) SCC 565***, he stated that the charge memo cannot be challenged at the

initial stage except on limited ground such as lack of authority in the person/authority issuing the charge memo or such other fundamental grounds. He also stated that petitioner has in fact concealed the fact of issuance of an additional charge sheet dated September 19, 2020 while filing C.M. No. 23068/2020.

72. On the plea taken by the petitioner that the Rules of 1965 will not be applicable to the employees of respondent No.2/CCRT, it is stated by Mr. Mahajan that CCRT is a society under the aegis of Ministry of Culture, Government of India. The society has its own Memorandum of Association and Rules & Regulations. The Chairperson of the society is appointed by Government of India and as per Rule 22 (vii) of Rules and Regulations of the CCRT, the society has power to frame with the approval of Government of India its regulations byelaws and rules of procedure. Further, it is stated by him that Rule 26 provides that, *“The Society may delegate to the Director General of the Society or any of its members and/or any other employees of the Society such administrative and financial powers and impose such duties as deem proper and also prescribe limitations within which said powers and duties are to be exercised or discharged”*. Rule 35 prescribes duties of all the employees of the Society which shall be exercised under such supervision and disciplinary control as may be necessary subject to Rules and bye-laws that may be framed. Additionally, Rule 58A of the Service Bye-laws state that *“In respect of any matters not specifically provided for in these rules relating to Conduct, Discipline, Appeals and Review, the relevant provisions contained in the Rules of 1965 as amended from time to time shall apply mutatis mutandis to employees of the Centre.*

73. That apart, it is also submitted that the petitioner has not been cooperating with departmental enquiry for which Enquiry Officer and Presenting Officer have already been appointed. He seeks the dismissal of the petition.

74. Having heard the learned counsel for the parties in both the petitions, the issue(s) which need to be decided primarily are whether the impugned order dated November 26, 2019 (in W.P.(C) 12674/2019), the Suspension order dated July 03, 2020 and Memorandum along with Articles of Charge dated July 03, 2020 (in W.P.(C) 4421) are proper, justified and validly issued.

75. At the outset, I shall deal with the issue of transfer of the petitioner to Udaipur vide order dated November 26, 2019. The plea of Mr. Singh was that the transfer order has been issued with malafide intention to take revenge against the petitioner who has initiated cases against Director CCRT, namely Rishi Kumar Vashist, the respondent No.2 and made complaints against him. Similar are the allegations against him for suspending the petitioner and also initiating disciplinary proceedings.

76. The allegations of malafide are based on facts as pleaded which are required to be answered by Rishi Kumar Vashist. For answering the allegations, it was necessary that Rishi Kumar Vashist is made a party in person in these proceedings. Unfortunately, he has not been impleaded by the petitioner. In the absence of Rishi Kumar Vashist being a party in person, the allegations quahim cannot be gone into. So, the impugned orders of Transfer / Suspension and Memorandum along with Articles of Charge cannot be tested / adjudicated on that ground. In this regard I may refer to the judgment of the Supreme

Court in the case of *N. Banavalikar (Dr) v. Municipal Corpn. of Delhi, 1995 Supp (4) SCC 89* has held as under: -

“21. In the facts and circumstances of this appeal, it is not possible to hold that the impugned action in removing the appellant and appointing Dr Patnaik is unfair or unjust or irrational or arbitrary or tainted with any mala fide intention. The contention of the appellant that in order to accommodate a junior doctor as Medical Superintendent in I.D. Hospital, Dr Patnaik had been moved out from the said hospital to replace the appellant as Medical Superintendent of RBTB Hospital, is not only vague but lacks in particulars forming the foundation of such contention. Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. ‘malice in fact’ should not be countenanced by the court. This appeal therefore, fails and is dismissed without any order as to costs.”

So, the challenge to the impugned orders, on the ground of malice needs to be rejected.

77. Insofar as the plea of malice in law is concerned, the allegations primarily are that the matters with regard to pay scale and the transfer order being subjudice, the Suspension and the Memorandum along

with Articles of charge could not have been issued. The malice in law means an act done wrongly and without reasonable/probable cause. The facts as noted above do not constitute malice in law. The pendency of petitions before this Court is not a bar on the authority to transfer the petitioner in exigency. The suspension of the petitioner was subsequent to the transfer of the petitioner to Udaipur and as such has no bearing on the transfer issue. In any case, there is no restraint order from the Court where the petitions are pending not to transfer the petitioner. Hence, the plea is unsustainable.

78. Now, coming to the plea of Mr. Singh that there is one post of Administrative Officer at New Delhi and in the absence of a post of Administrative Officer in the Centre at Udaipur, the petitioner could not have been transferred is also unsustainable in view of clear stipulation in the transfer policy dated May 21, 2019 which reads as under:

“The following broad parameters are decided for transfer of the officers / staff of CCRT from and within headquarter and its three Regional Centres:-

1. All Group ‘A’ officers Including Dy. Directors and Group ‘8’ officers Including Field Officers, Accounts Officer, Administrative Officer etc. may be liable for transfer within any department of the Headquarter and to Regional Centres at Hyderabad, Udaipur and Guwahati on completion of a period of three (03) years at one place of posting either at the Headquarter or Regional Centre, CCRT as and when required In public interest.”

79. The aforesaid transfer policy has not been challenged by the petitioner. The transfer of the petitioner as Administrative Officer, to Udaipur is permissible under the policy. The same cannot be faulted.

80. That apart, the respondents have justified the transfer of the petitioner based on a communication dated November 25, 2019 received from the Consultant at the Centre at Udaipur wherein he has stated as under:

“The Centre has only two regular staff - a Hindi Steno-typist who looks after administration and a Jr Accountant taking care of accounts work. The Centre is therefore functioning for the last several years with such minimal administrative support.

We are currently in a hired building incurring substantial amount as rent. We need to liaise with the landlord in the upkeep of the building on a regular basis.

Our new building is being constructed and the first phase is likely to be completed soon. It needs regular and systematic monitoring to ensure conformity with the tender specifications that needs a senior official conversant with administrative matters.

The lack of senior admn official hampers us from even routine activities like upkeep of the building, house keeping jobs or important works like calling for tenders/quotations for catering, security, transport etc. This has resulted in

continuing with the same vendors for catering, security and transport for over three years even while the service provided by them is not very satisfactory. The tenders /quotations could not be called for until now due to inadequate administrative support. Earlier senior officials were coming from the CCRT Headquarters to help the Centre. We could initiate action for quotations for catering, security and transport this month only due to help from the CCRT, Headquarters. If we had a senior administrative staff, this could have done much earlier.

In addition, the construction site is about 10 km away and we are unable to systematically supervise the construction activity due to limited staff, Once the construction activity picks up in the next few months, the bills submitted for payment need to be checked and processed for payment ensuring that they are as per the tender specifications.

More importantly, once the building is complete we need to take steps to acquire furniture, fillings etc for which the Centre needs to float tenders. There is no senior administrative person at CCRT Udaipur, who can handle this important work.

In view of the above, we would be grateful if a senior, experienced person conversant with administrative matters is posted to the CCRT, Udaipur asap....

Thanking you and with regards

Yours faithfully

Satyanarayana”

81. It is pursuant to the aforesaid request made by the Consultant that the impugned transfer order was issued. The transfer order refers to the above request received from Udaipur. The request of the Consultant reveals the exigencies for posting a senior officer with background in administration at Udaipur. There is enough justification for the respondents to transfer the petitioner to Udaipur in administrative exigencies. The law with regard to transfer is well settled in terms of the judgment of the Supreme Court in the case of ***State of U.P. v. Siya Ram, (2004) 7 SCC 405***, that the transfer unless shown to be malafide or in violation of statutory rules is not open to interference by the Court. The Supreme Court has in paras 5 and 6 held as under:

“5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a

condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan [(2001) 8 SCC 57 : 2001 SCC (L&S) 21].

6. The above position was recently highlighted in Union of India v. Janardhan Debanath [(2004) 4 SCC 245: 2004 SCC (L&S) 631]. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest. ”

82. It is also settled law that the transfer is an incident of service (Ref: **Registrar General, High Court of Madras vs. R. Perachi, (2011) 12 SCC 137**). The Supreme Court in the case of **N.K. Singh vs. Union of India, (1994) 6 SCC 98**, has in para. 23 held as under: -

“xxxx Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

83. Mr. Bharat Singh has in support of his submissions relied upon the judgment in the case of **Arvind Dattatraya Dhande (supra)**, that in view of impeachable, eloquent, testimony of performance of duties, the transfer of an officer was held to be malafide exercise of power. I have considered the judgment and the facts as noted by the Supreme Court; the same are at variance with the facts available in the case in hand. I have already detailed above the exigencies for which the transfer of the petitioner has been made to Udaipur. The plea that the same is because of litigation / complaints made by the petitioner is only a figment of imagination of the petitioner which has no basis. The judgment has no

applicability. The other judgments relied upon by Mr.Singh being, *State of Kerala (supra)*, *Dipankar Sengupta (supra)* and *Somesh Tiwari (supra)* are distinguishable on facts and as such have no applicability to this case. I do not see any merit insofar as the petition being W.P.(C) 12674/2019 is concerned. The same is dismissed.

84. Insofar as the writ petition being W.P.(C) 4421/2020 is concerned, the challenge is to the order of Suspension and Memorandum issued along with Articles of Charge to the petitioner. The grounds on which the impugned order / memorandum are challenged are the following:

- (i) The respondent No.2 is not empowered to issue the suspension order under Rule 10 of the CSS (CCA) Rules, 1965 as he is under investigation under the Prevention of Corruption Act and is required to be under suspension.
- (ii) Suspension order has been passed only to deny the petitioner the right of consideration to the post of Deputy Director (Admn).
- (iii) The respondent No.2 has initiated the proceedings under the Conduct rules after the petitioner had filed the complaints and Court cases against the CCRT.
- (iv) The CCRT being a Society registered under the Societies Registration Act and in the absence of notification in the official Gazette, the Rules of 1965 are not applicable.

85. Having noted the broad submissions made by Mr. Singh, I shall now deal with the same. Insofar as his submission that the respondent

No.2 cannot suspend the petitioner as he is under investigation under the Prevention of Corruption Act is concerned, suffice to state, the petitioner has not given any details of the case / FIR registered against the respondent No.2 pursuant to which the investigations are being conducted against him. In any case, it is not the case of the petitioner that the respondent No.2 is under suspension or his power as Disciplinary Authority being the appointing authority of all Group B posts, which includes the post of Administrative Officer, has been taken away. In other words, the respondent No.2 is discharging the functions of Director of CCRT and being the Disciplinary Authority of the petitioner is competent to suspend him. This plea of Mr. Singh is rejected.

86. The plea that the petitioner has been suspended to deny him the consideration to the post of Deputy Director (Admn) is also unmerited. Merely because the petitioner is under suspension and charge sheet has been issued, shall not bar his consideration for promotion to the post of Deputy Director (Admn) except, in such an eventuality, the recommendations of the DPC shall be kept in a sealed cover which shall be opened on the culmination of the proceedings provided the charges are not proved against the petitioner.

87. The plea of Mr. Singh that the impugned order of Suspension and Memorandum, issuing Articles of Charge are because the petitioner has filed cases and made complaints against the CCRT / respondent No.2 is concerned, the plea as made in effect is that, the respondent No.2 has with ulterior motive, suspended and has issued the charge sheet to the petitioner. Such a plea is unsustainable for the reasons already stated above i.e., the Director of CCRT, Rishi Kumar

Vashist has not been made a party in person to enable him to meet the allegations of the petitioner on facts that have been pleaded to allege malafide. So, the plea being unsustainable in law, cannot be considered.

88. Insofar as the plea of Mr. Singh that the Rules of 1965 are not applicable in the absence of any Gazette notification issued upon declaration by the President is also unmerited. The CCRT is a Society registered under the Societies Registration Act and as such is regulated in terms of Rule 58A of the service Byelaws, whereby the Rules of 1965 have been made applicable, mutatis mutandis to the employees of CCRT. By operation of Rule 58A, the Rules of 1965 have been made applicable to the employees of CCRT including the petitioner herein. There is no challenge to the *vires* of Rule 58A of the service Byelaws by which the Rules of 1965 have been made applicable to the employees of CCRT. On the strength of the said rule, the respondent No.2 is within his right to suspend and issue Memorandum dated July 03, 2020 to the petitioner and the same cannot be faulted.

89. I may also state here that mere suspension of an employee would not amount to cessation of service. On suspension, the employee is kept away from the office so that he does not tamper with the evidence or influence any of the witnesses so to be produced by the management before the Enquiry Officer. I also note, that the order of suspension has been reviewed by the respondents, thereby extending the same, which has not been challenged.

90. Having said that the further issue which arises for consideration is, can the charge sheet be quashed at this stage, when inquiry

proceedings are going on against the petitioner. The answer in this respect has to be “NO” in view of the judgment of the Supreme Court in the case of *Union of India vs. Kunisetty Satyanarayana (2006) 12 SCC 28*, wherein the Supreme Court in para. 14 has held as under:

“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 petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. 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.”

91. It is also settled law that at the charge sheet stage, the Court will not go into the correctness of the charges. It is for the Inquiry Officer who has been appointed by the Disciplinary Authority under the rules which governs the proceedings before whom the evidence shall be led by both the parties, to determine the correctness of the charges in his report. That apart, if any order is passed to the prejudice of the petitioner, he shall have liberty to seek such remedy as available under the Rules.

92. In view of my discussion above, I do not see any merit in this

petition as well, both the petitions are dismissed. No costs.

C.M. APPLs. 51744/2019 & 11951/2020 in W.P.(C) 12674/2019
C.M. APPLs. 15923-2020 & 33264/2020 in W.P.(C) 4421/2020

In view of the fact that I have dismissed the Writ Petitions, the present applications are also dismissed.

V. KAMESWAR RAO, J

JUNE 23, 2021/aky

