



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: August 16, 2022
Pronounced on: August 24, 2022

+ **W.P.(C) 1159/2020 & CM APPL.3856/2020 & 30188/2022**

ANIL BALI

.... Petitioner

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. H.S. Tiwari and Mr. Nikunj Arora, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. T.P. Singh, Sr. Central Govt. Counsel

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J.

1. The petitioner before us submits that since his appointment as Assistant Commandant in CISF and promotion as Senior Commandant, he was being deputed at different places from time to time. While posted as Sr. Commandant at Kochi Port Trust, an anonymous complaint qua a false caste certificate submitted by one Lola Ramanayya, CISF No.942290688, constable, Unit CPT Cochin, Kerala (hereinafter referred to as “*Constable*”) at the time of his recruitment, was received on 22.10.2013. The said caste certificate was found to be false by the Tehsildar on 16.06.2014 and by the Collector on 05.09.2014. Thus, respondents vide letter dated 24.09.2014



requested the then Senior Commandant, i.e. petitioner to initiate appropriate disciplinary action against the said Constable.

2. A perusal of records of the said Constable by petitioner revealed a false caste certificate dated 09.02.1993 and its verification report dated 05.09.2007. This prompted the petitioner to, in the light of re.: ***Kumari Madhuri Patil vs. Addl. Commissioner*** (1994) 6 SCC 241, ask the District Collector qua the authenticity of the said documents vide letter dated 07.10.2014.

3. In the interregnum, in another parallel proceeding, as the Constable was absconding from his duties and was OSL (Over Stayed Leave) since January, 2014 despite several unanswered Lookout Notices issued in February, 2014, the respondents issued a charge-sheet dated 01.09.2014 to him. Though the Constable replied thereto on 21.09.2014 but chose not to appear before the competent authority. The competent authority thus proceeded ex-parte and issued a final order dated 06.03.2014 finding him guilty of overstay of leave and imposed the punishment of compulsory retirement from service with 10% cut in his monthly pension. The said order, after review by the Appellate Authority, was held to be valid.

4. The petitioner was then posted out of Kochi Port Trust on 31.03.2016. Later on the District Collector on 03.12.2016 responded to the letter dated 07.10.2014 of petitioner.

5. However, vide letter dated 18.08.2017 the respondents sought an explanation from petitioner as to why the said Constable was dealt for OSL only and not for submitting a false caste certificate. After receiving the response dated 01.11.2017 from the petitioner, the respondents issued a



charge-sheet dated 13.12.2019 to him. The petitioner responded thereto also vide his reply dated 15.01.2020.

6. Being aggrieved and prior to commencement of any proceedings there under, the petitioner approached this Court by way of the present petition seeking issuance of a writ of certiorari for quashing the Charge Memorandum dated 13.12.2019 as well as quashing any other proceedings initiated against him pursuant to the above said charge-sheet.

7. Upon hearing the learned counsel for petitioner, vide order 31.01.2020 this Court issued notice to the respondents and directed that no further proceedings shall take place pursuant to the charge memorandum dated 13.12.2019 till the next date of hearing. The said order is subsisting as on date.

8. During arguments learned counsel for the petitioner contended that the act of the petitioner was *bona fide* and as Senior Commandant he was duty bound to follow the law laid down in ***Kumari Madhuri Patil*** (*supra*) and that the respondents have issued the impugned charge sheet without examining the reply dated 01.11.2017 of the petitioner which specifically mentioned Rule 9 of the Andhra Pradesh Schedule Castes, Schedule Tribes and Backward Classes-Issue of Community, Nativity and Date of Birth Certificate Rules, 1997.

9. Learned counsel for the petitioner also contended that the impugned charge-sheet is violative of the law laid down in ***Government of A.P. & Ors. vs. A. Venkata Raidu*** (2007) 1 SCC 338 and ***Kumari Madhuri Patil*** (*supra*) and that vide the impugned charge-sheet he has wrongly been held violating Rule 3(1)(i), (ii) & (iii) of the CCS Conduct Rules, 1964.



10. After putting in their appearance, the respondents filed a common counter affidavit in response submitting that the petitioner, despite being directed by CISF Directorate to take disciplinary action against the Constable for submitting of a false caste certificate and acting against the Guidelines of the DOP&T Office Memorandum dated 10.01.2013, did not award the penalty of removal or dismissal from service to him. The petitioner was under an obligation to abide by the directions to initiate disciplinary action against the said Constable on the charge of submitting false caste certificate at the time of recruitment.

11. Also submitted that the respondents have rightly issued the impugned charge-sheet after seeking approval of the Competent Authority under Rule 14 of the CCS (CCA) Rules, 1965 to the petitioner and that he never cited the case of ***Kumari Madhuri Patil (supra)*** in his reply dated 07.10.2014 and even otherwise, the same is not applicable to the facts of the present *lis*. Lastly submitted that the present writ petition is not maintainable in view of ***Union of India & Anr. vs. Kunisetty Satyanarayana*** (2006) 12 SCC 28 wherein it has been held that ordinarily no writ lies against a charge-sheet or show-cause notice and ***Shashi Bhushan Prasad vs. Inspector General, CISF & Ors.*** (2019) 7 SCC 797 wherein it was held that it is not otherwise open to courts to interfere in the disciplinary proceedings under its limited scope of Articles 226 and 227 of The Constitution of India.

12. In addition, learned counsel for the respondents during arguments contended that the petitioner was duty bound to follow the directions of CISF Directorate and take disciplinary action for submission of the false caste certificate by the Constable and that the petitioner had not awarded the appropriate punishment to him. Learned counsel for the respondents



also contended that the acts of the petitioner are violative of the Guidelines of the DOP&T OM dated 10.01.2013. As such the respondents have rightly issued the impugned charge-sheet after seeking due approval of the Competent Authority under Rule 14 of the CCS (CCA) Rules, 1965 and the reliance upon ***Kumari Madhuri Patil***(*supra*) is an after-thought.

13. Learned counsel for the respondents further contended that the present writ petition being premature, is not maintainable, in view of ***Kunisetty Satyanarayana*** (*supra*) and that this Court has very limited scope to interfere in the disciplinary proceedings under Articles 226 and 227 of The Constitution of India in view of ***Shashi Bhushan Prasad*** (*supra*).

14. We have perused the documents on record and heard the learned counsel for both parties.

15. Before proceeding with the merits of the matter, at the outset we note that as per the factual matrix in the case on hand before us, the petitioner has approached this Court directly after issuance of the charge-sheet upon himself, albeit after filing a reply thereto. It is thus clear that the petitioner has *admittedly* chosen not to await either the appointment of a competent authority by the respondents or to await the commencement of the departmental proceedings by such authority or to participate in any such proceedings before such authority. The petitioner has thus not raised his defence(s)/ grievance(s)/ objection(s) before the said competent authority.

16. The petitioner has not exhausted the proper remedy for redressal of his defence(s)/ grievance(s)/ objection(s) available under law. By way of the present petition the petitioner has pre-judged that there exists an order against him and that he has already been held guilty and has been granted punishment by the respondents, when there is actually nothing of that kind.



We cannot presume anything of that nature as the respondents, following the *principles of natural justice* and *audi alteram partem*, are required to accord all reasonable opportunities to petitioner for submitting his case and for rebutting the charge(s) levied against him.

17. The petitioner has not alleged any error on the part of anyone, much less the respondents and has not alleged any violation or non-adherence to the statutory rules, regulations, notifications or like by the respondents. The petitioner has also not alleged any mala fide, bias of any kind against anyone, much less the respondents of the kind that there is any violation of principles of natural justice of any kind by anyone, much less the respondents or that he has not been given a hearing. In view thereof, the maintainability of the present petition in the present form casts a shadow of doubt and leaves hardly any scope of interference by this Court.

18. Reliance is placed upon ***Shashi Bhushan Prasad*** (*supra*), wherein it has been held as under:-

“23. It is not the case of the appellant that any error committed in the procedure prescribed under the scheme of the CISF Rules, 1969 has been violated or opportunity to hearing has not been afforded or the principles of natural justice has been violated, in absence thereof, it is otherwise not open for the courts to interfere in the disciplinary proceedings under its limited scope of review under Articles 226 and 227 of the Constitution of India.”

19. Ordinarily, no writ petition of the present nature, simply against issuance of a charge-sheet by the respondents herein, ought to be entertained. The present petition being of such nature is not maintainable against the mere issuance of a charge-sheet for the reasons whence *admittedly* no competent authority has been constituted by the respondents yet and whence *admittedly* the delinquent has not participated before any



such authority and whence *admittedly* there has been neither any enquiry nor any adjudication on any of the charges set out in the charge-sheet by such authority.

20. The petitioner cannot be permitted to put the cart before the horse. The present petition is based on preponderance of probability as the same is arising out of a charge-sheet issued by the respondents which has not commenced and is yet to see light of the day. Having said so, it is a matter of fact that today there is no adverse order under challenge before us. The present petition is thus pre-mature.

21. Reliance is placed upon ***Kunisetty Satyanarayana*** (*supra*), wherein it has been held as under:-

“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327:JT (1995) 8 SC 331], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440:2004 SCC (Cri) 826:AIR 2004 SC 1467], Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639], State of U.P. v. BrahmDatt Sharma [(1987) 2 SCC 179:(1987) 3 ATC 319:AIR 1987 SC 943], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ 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.



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 and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

22. Reliance is also placed upon **Commissioner of Central Excise, Haldia vs Krishna Wax(P) Ltd** (2020) 12 SCC 572, wherein it has been held as under:-

“14. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a writ court to entertain a petition under Article 226 of the Constitution and that the person concerned must first raise all the objections before the authority who had issued a show-cause notice and the redressal in terms of the existing provisions of law could be taken resort to if an adverse order was passed against such person.”

23. Reliance is also placed upon **Commissioner of Income Tax, Gujarat vs. Vijaybhai N Chandrani** (2013) 14 SCC 661, wherein it has been held as under:-

“12. In our considered view, at the said stage of issuance of the notices under Section 153-C, the assessee could have addressed his grievances and explained his stand to the assessing authority by filing an appropriate reply to the said notices instead of filing the writ petition impugning the said notices. It is settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the same before approaching the writ court. In *Bellary Steels & Alloys Ltd. v. CCT* [(2009) 17 SCC 547], this Court had allowed the assessee therein to withdraw the original writ petition filed before the High Court as the said proceedings came to be filed against the show-cause notice and observed that the High Court should not have interfered in the matter as the writ petition was filed without even reply to the show-cause notice. This Court further observed as follows:

“3. ... In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy,



but for the fact that huge investments involving the large number of industries is in issue.”

14. In the present case, the assessee has invoked the writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the writ petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the assessing authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.”

24. It would thus not be appropriate for this Court to hear the present petition under Article 226, especially whence it is trite law that writ jurisdiction itself is a discretionary remedy which should be sparingly exercised in cases involving the present nature, more so, whence there is hardly any scope of interference by this Court under the facts and circumstances of the present case.

25. The proper remedy for the petitioner before approaching this Court under Article 226 was to first participate in the proceedings initiated by the respondents before the competent authority and place his defence(s)/ grievance(s)/ objection(s) before it and then await the outcome, in the nature of a concrete finding, thereof.

26. In view of the above analysis and the settled position of law, there is no need for us to dwell into the case set up by the petitioner and/ or the case laws relied upon by the learned counsel for the petitioner. They are of little, and in fact, of no assistance and hardly have any bearing on the facts pleaded before us. We are thus refraining from commenting upon the merits of what has been pleaded and set up by the petitioner before us.



27. We have thus no hesitation in holding that the present writ being premature, has been wrongly filed upon mere issuance of the impugned charge-sheet by the respondents. Accordingly, the writ petition being not maintainable in law and deserves outright dismissal.

28. The present writ petition, alongwith all the pending applications therein, is accordingly dismissed leaving the parties to bear their own costs. Needless to say, the interim order dated 31.01.2020, thus also stands vacated.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

AUGUST 24, 2022

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