IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19453 of 2021

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1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary/ Addl. Chief Secretary Department of Home, Govt. of Bihar, Patna.
3. The Additional Secretary, Govt. of Bihar, Patna.
4. The Joint Secretary, Govt. of Bihar, Patna.
5. The Principal Secretary, Department of Home (Police), Govt. of Bihar, Patna.

... ... Petitioner/s

Versus

1. Anusuya Ransing Sahoo Wife of Sri Priyadarshi Sahoo Flat No. 101, Shivam Vihar Apartment, Mohalla- Anandpuri, West Boring Canal Road, Patna. At present posted as Superintendant of Police (Weaker Section), CID.
2. The Union of India Through the Secretary, Ministry of Home Affairs, North Block, New Delhi.- 110001

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Ghosarvey (A.C. To A.A.G.3)
For the Respondent/s	:	Mr. Ashok Kumar Choudhary, Sr. Advocate
		Mr. Akshansh Ankit, Advocate
		Mr. Amit Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 12-01-2023

Learned counsel for the respondent submitted that there is delay of two and half years in filing petitioner's writ petition against CAT order. There is no limitation in so far filing writ petition against the order of the CAT in the light of Apex Court's decision in the case of ***L. Chandra Kumar V. Union of India & Ors.*** reported in ***(1997) 3 SCC 261.*** If limitation is not stipulated, in such event reasonable period would be three years

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with reference to filing of a suit. Consequently there is no delay in filing the present C.W.J.C.

Heard learned counsels for respective parties.

In the instant writ petition, petitioner-State has assailed the order dated 30.06.2019 passed in O.A. No. 050/00754 of 2018 (M.A./050/00384/2018 and 517/18) by the Central Administrative Tribunal, Patna Bench, Patna (For short "CAT").

Respondent is an IPS Officer of 2006 batch of Bihar Cadre. She was posted as 1st Commandant-cum- Principal, Military Police Training (in short "MPT") College, Dumrao on 29.03.2013. She was working as such till September, 2014. During the intervening period she was not provided office facilities including various infrastructure to run the administration of the post of 1st Commandant-cum- Principal MPT College, Dumrao. For want of sanction of certain amount to run the aforementioned office, she was not provided financial aid by the competent authority/ government whereby she was compelled to utilize her personal money in order to facilitate infrastructure to the office. That apart, there were certain allegations against her in not maintaining the office records and she was subjected to disciplinary proceedings by initiation of

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inquiry on 10.05.2018 under Sub-rule 2 of Rule 8 of All India Service (Discipline and Appeal) Rules, 1969.

Following five charges have been framed:-

> "Article 1: In the statement given by Shri D.N.Singh, Dy. Superintendent of Police, M.P.T.C. Dumaraon, it was mentioned about commodities related to 11 committees. These were not physically found in the institute. The said items were of a period of posting of Shrimati Sahu dated 01.04.2013 to September, 2014 in the year 2013-14 and 2014-15. From this it is clear that the item purchased by Smt. Sahu were not physically found in the Institute. This shows lack of control and supervision on the part of Smt. Sahu.
>
> Article- II:- That a detailed report given by a Committee under the Chairmanship of Shri Mansoor Ahmad, IPS regarding allotment and expenditure and purchase of commodities in the year 2013-14, 2014-15 and 2015-16. It is stated that during the tenure of Smt. Sahu [dated 01.04.2013 to Sept., 2014] cash book with respect to Account Section, contingency register, and stock & distribution register related to G.P. were not maintained. Thereby the procedure regarding accounts has been overlooked for which Smt. Sahu is responsible.
>
> Article-III:- For most of the purchases made during the tenure of Smt. Sahu, payments of money was done in her own bank account. For purchases, no Purchase Committee as per government rules was constituted and rules and procedure relating to purchases were also not followed. It is clear from the inquiry report of the Vigilance Investigation Bureau that Smt Sahu did not follow the financial rules and there was irregularity in the process of purchase of commodities. Smt. Sahu had passed several vouchers obtained in a day from single agency which is in violation of Rule 131 (d) and (f) of

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> Bihar Finance Rules.
>
> Article-IV:- The amount allotted under the head "Hospitality Expense" has been utilised by Smt. Sahu trom Patna which indicates that she was running her office from Patna, the said conduct indicates her arbitrariness.
>
> Article-V:- Smt. Sahu spent her own money to purchase the commodities and got the bill paid in her own account on getting the allotment. Smt. Sahu has committed irregularities and negligence in the process of purchase of items and payment of amount which shows her arbitrariness and neglect of duty which is violation of rule 3 of All India Service (Conduct) Rules, 1968. (Annexure A/1 which is impugned herein)."

Respondent filed her explanation to the charge-memo and it was rejected. In the Original Application filed before the CAT she has questioned the memorandum dated 10.05.2018 and the later decision dated 28.08.2018 (Annexure-1 and 2 to the Original Application). CAT allowed the Original Application filed by the Respondent while quashing the initiation of enquiry and rejection of Respondent's explanation to the charge-memo dated 10.05.2018 and 28.08.2018, respectively. Hence, the present writ petition by the State.

Learned counsel for the Petitioner -State vehemently contended that CAT has exceeded its jurisdiction in entertaining O.A. in so far as challenge to the initiation of enquiry and rejection of respondent's explanation to the charge-

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memo are concerned. It is submitted that charge-memo could be interfered by the Tribunal and Courts only on the score that if it is in violation of rules or initiation of enquiry is by an incompetent authority. Further it is submitted that Original Application filed by the respondent is pre-mature. Only against final order, she has right to invoke Section 19 of the Administrative Tribunal Act, 1985. The aforementioned contention has not been appreciated by the CAT. Hence order of the CAT is liable to be set aside while restoring the initiation of enquiry against respondent.

Per contra, learned senior counsel for respondent resisted the aforesaid contentions and submitted that Tribunal has appreciated the reasons for interfering with the initiation of enquiry/ charge-memo and consequential order rejecting her explanation to the charge-memo.

Learned senior counsel for the respondent vehemently contended that Petitioner-State have not provided necessary funds or provided infrastructure to the office of the 1^{st} Commandant-cum- Principal MPT College, Dumrao so as to administer the office for which she was posted on 29.03.2013. It is submitted that till she was posted elsewhere necessary financial aid has not been granted by the concerned authority/

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State Government. Therefore, she was compelled to utilize her personal money while purchasing various office materials and thereafter, she has claimed reimbursement.

In the light of these facts and circumstances, the alleged Charge Nos. 1 to 5 are baseless. In fact, preliminary enquiry has been held in which preliminary equiring authority have taken note of the deficiencies in running the office of the 1^{st} Commandant-cum-Principal MPT College, Dumrao by the respondent. Therefore, there is no infirmity in the order of the CAT dated 30^{th} January, 2019 passed in O.A. No. 050/00754/2018. Hence, no interference is called for.

Heard learned counsels for respective parties.

Respondent's Original Application before the Central Administrative Tribunal is not maintainable for the reasons that Section 19 of the Administrative Tribunals Act reads as under:-

> "**19. Applications to Tribunals.-** (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.
>
> *Explanation*.-For the purposes of this sub-section, "order" means an order made- (***underline emphasized)***
>
> (*a*) by the Government or a local or other authority within the territory of India

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or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]

(4) Where an application has been admitted by a Tribunal under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

Explanation to Sub-section 1 of Section 19 makes it crystal clear that for the purpose of Sub-section-1 "Order" means an order made by the concerned authority. Initiation of enquiry by issuance of show cause notice is not an order so as to

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entertain respondent's application under Section 19 of the Administrative Tribunal Act, 1985 by the CAT. Further assuming that Central Administrative Tribunal has jurisdiction to interfere with the show cause notice, the said show cause notice could be interfered by the Tribunal/Courts only under two circumstances, namely, in the initiation of enquiry/show cause notice is in violation of relevant rules or it is issued by an incompetent authority. Both ingredients are not forthcoming so as to interfere with the show cause notice and consequential rejection of respondent's explanation on the charge-memo. On this issue the Apex Court in the case of ***Union of India & Ors. V. Kunisetty Satyanarayana*** reported in ***(2006) 12 SCC 28*** in para 13 to 16 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, Special Director v. Mohd. Ghulam Ghouse, Ulagappa v. Divisional Commr., Mysore, State of U.P. v. Brahm Datt Sharma, 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

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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."

Further Apex Court has reiterated the aforesaid principle in the case of ***Secretary, Ministry of Defence & others Vs. Prabhash Chandra Mirdha*** reported in ***(2012) 11 SCC 565***, para 12 of which reads as under:-

"**12.** Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the

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> delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

In the light of the aforesaid principle laid down by the Apex Court, the CAT has committed an error in interfering with the show cause notice/ initiation of enquiry dated 10.05.2018 and consequential order of rejecting respondent's explanation on the charge-memo dated 28.08.2018.

In the light of these facts and circumstances, the State-Petitioner have made out a *prima facie* case so as to interfere with the CAT order dated 30th January, 2019 passed in O.A. No. 050/00754 of 2018. Hence, it is set aside. O.A. No. 050/00754/2018 is rejected. Accordingly, present petition stands allowed.

Concerned authority is hereby directed to complete the enquiry proceedings within a period of six months from the date of receipt of this order. Respondent is directed to co-operate in the disciplinary proceedings.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2023
Transmission Date	NA

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