



2023:DHC:8937



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

% **Date of order: 17th November, 2023**

+ **W.P.(C) 14910/2023**

RAJ KUMAR

..... Petitioner

Through: **Mr. Saurabh Kansal, Advocate**

versus

THE PRINCIPAL DISTRICT AND SESSIONS JUDGE HQ

..... Respondent

Through: **Mrs.Avnish Ahlawat, Standing
Counsel for GNCTD-Services with
Mr.N K Singh, Ms.Laavanaya
Kaushik, Ms.Aliza Alam and
Mr.Mohnish Sehrawat, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 59456/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 14910/2023 & CM APPL. 59455/2023 (Stay)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

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Signing Date: 14.12.2023
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“a) Quash the Memorandum dated 26.09.2023 issued by Respondent;

b) Pass any further and /or such other relief(s) as this Hon’ble Court deems fit and proper in the facts and circumstances of the case, be also granted to the petitioner.”

2. The relevant facts necessary for the adjudication of the instant petition have been reproduced herein below:

a. In the year 2007, the petitioner was posted as lower divisional clerk in the Court of Sh. Rajan Jayant, Special MM, Rohini Court, New Delhi.

b. Whilst the petitioner was posted at the said Court on 28th November 2007, a complaint was filed before the Anti-Corruption Branch, District GNCTD citing malpractices by certain officials posted in the court of Sh. Rajan Jayant, Special MM, Rohini Court, New Delhi.

c. Consequently, a raid was conducted on the same day by the Anti-Corruption Branch in the said Court.

d. During the raid, the petitioner was apprehended by the Anti-Corruption Branch on the charges of corruption for seeking of Rs. 2000/- as bribe for the purpose of settling traffic challans.

e. Subsequently, a FIR was registered pursuant to which the petitioner was arrested on 30th November 2007. Due to the said arrest of the petitioner, he was suspended from his job post from 28th November 2007 to 08th May 2009 on the ground of



arrest.

f. The charge sheet was filed against the petitioner wherein the charges under Section 7 and 13 of Prevention of Corruption Act read with Section 120B Indian Penal Code was levied against the petitioner.

g. On the basis of the said chargesheet, the respondent has issued Memorandum dated 26th September 2023.

h. The present petition is being filed seeking quashing of Memorandum dated 26th September 2023 wherein the respondent intended to initiate a departmental enquiry against the petitioner for alleged corruption incident of 2007 as well as on the basis of chargesheet filed after about 14 years of incident against the principles of natural justice.

3. Learned counsel appearing on behalf of the petitioner submitted that respondent No. 1 has not taken into consideration the fact that if the criminal and departmental proceedings are founded on identical allegations, facts, documents, and prosecution witnesses, the departmental proceeding shall be stayed until the prosecution witness in the criminal proceeding is examined.

4. It is submitted that the memorandum itself shows that the enquiry is being initiated based on chargesheet which is not permissible under law and will tantamount to double jeopardy.

5. It is further submitted that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature, then



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there should be stay of the departmental proceedings till the conclusion of the criminal case.

6. In view of the foregoing submissions, the counsel for the petitioner prayed that the petition may be allowed, and the reliefs as claimed by the petitioner may be granted by this Court.

7. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present writ petition submitting to the effect that the impugned show cause notice/ memorandum dated 26th September 2023 has been issued by the competent authority on and does not suffer from any illegality as the same has been issued in compliance with the statutory rules and principles of natural justice.

8. It is contended that respondent has given the opportunity to the petitioner by way of issuing show-cause notice an opportunity to the petitioner to elucidate the reasons for not initiating disciplinary proceedings against him.

9. It is submitted that the petitioner may file his reply to the said show cause notice issued by respondent, which will be accordingly considered in adjudication of the issue at hand.

10. Hence, in view of the foregoing submissions, the respondent seeks that this Court may dismiss the writ petition thereby, upholding the impugned orders.

11. Heard learned counsels for the parties and perused the material on record including the pleadings the various documents filed by the petitioner and judicial precedents cited.



12. The question for adjudication which falls before this court is whether this court can quash the Memorandum dated 26th September 2023 issued by respondent.

13. To consider this issue it is imperative to reiterate the impugned memorandum date 26th September 2023 which is reproduced herein below:

“1.The under signed proposes to hold an inquiry against Sh. Raj Kumar, the then Ahlmad under Rule 29 of Delhi District Courts Establishment (Appointment & Conditions of Service), Rules, 2012. A statement of articles of charge framed (Annexure-I), statement of imputations of misconduct in support of each article of charge (Annexure-II) is enclosed. A list of documents by which, and a list of witnesses by whom (Annexure-IIT and IV) the article of charge are proposed to be sustained are also enclosed.

2. Sh. Raj Kumar, the then Ahlmad is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3.He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore, specifically admit or deny each article of charge.

4.Sh. Raj Kumar, the then Ahlmad is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 29 of Delhi District Courts Establishment (Appointment & Conditions of Service), Rules, 2012 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

5.Attention of Sh. Raj Kumar, the then Ahlmad is invited to rule 20 of the Central Civil Service (Conduct) Rules, 1964 under which no government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the government. If any representation is received on his behalf from



another person in respect of any matter dealt within these proceedings it will be presumed that Sh. Raj Kumar, the then Ahlmad is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the CCS (Conduct) Rules, 1964 read with Rule 42 of Delhi District Courts Establishment (Appointment & Conditions of Service), Rules, 2012.

6. The receipt of the Memorandum may be acknowledged.”

14. Before delving into merits, this Court will examine the principle governing quashing of show-cause notice under Article 226 of the Constitution of India.

15. A show-cause notice does not give rise to any cause of action since there is no such violation of the rights of the party unless the same has been issued by an authority/person who does not have the jurisdiction. There is a likelihood that after considering a reply to the show cause notice issued by a competent authority or holding an inquiry, the authority may hold that the charges are not proved against the party.

16. Under Article 226 of the Constitution of India, the Court can take any action against the authority when there is a violation of rights. In the case of a show-cause notice, there is no such infringement of the right of the party unless in circumstances where the grievance is caused to the party, such as a show-cause notice imposing any punishment on the party or adversely affecting a party.

17. Hence, Writ jurisdiction is a discretionary jurisdiction, and such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice. In some very rare and exceptional cases, the High



Court can quash 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.

18. The Hon'ble Supreme Court in a catena of judgments has ruled that writ petitions are not entertainable against show-cause notices and only exceptionally the Courts intervene at the stage of show-cause notice. The Hon'ble Supreme Court in the judgment of **CCE v. Krishna Wax (P) Ltd., (2020) 12 SCC 572** held as follows:

“13. It must be noted that while issuing a show-cause notice under Section 11-A of the Act, what is entertained by the Department is only a prima facie view, on the basis of which the show-cause notice is issued. The determination comes only after a response or representation is preferred by the person to whom the show-cause notice is addressed. As a part of his response, the person concerned may present his view point on all possible issues and only thereafter the determination or decision is arrived at. In the present case even before the response could be made by the respondent and the determination could be arrived at, the matter was carried in appeal against the said internal order. The appellant was therefore, justified in submitting that the appeal itself was premature.

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 the law could be taken resort to if an adverse order was passed against such person.



For example in **Union of India v. Guwahati Carbon Ltd.**, it was concluded; “The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution”, while in **Malladi Drugs & Pharma Ltd. v. Union of India**, it was observed:

“... The High Court, has, by the impugned judgment held that the appellant should first raise all the objections before the Authority who have issued the show-cause notice and in case any adverse order is passed against the appellant, then liberty has been granted to approach the High Courtin our view, the High Court was absolutely right in dismissing the writ petition against a mere show-cause notice.”

15. It is thus well settled that writ petition should normally not be entertained against mere issuance of show-cause notice. In the present case no show-cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter.”

19. The said principle of law pertaining to show cause notice was further discussed in the judgment of **Malladi Drugs & Pharma Ltd. v. Union of India**, (2020) 12 SCC 808 as follows:

“2. The High Court, has, by the impugned judgment held that the appellant should first raise all the objections before the authority who have issued the show-cause notice and in case any adverse order is passed against the appellant, then liberty has been granted to approach the High Court.

3. Even otherwise, in our view, the High Court was absolutely right in dismissing the writ petition against a mere



show-cause notice. We see no reason to interfere. The appeals stand dismissed. There will be no order as to costs."

20. It is the case of the petitioner that the criminal proceedings are already going on against the petitioner and the respondent has initiated a departmental enquiry against the petitioner for alleged incident of 2007 and that too based on chargesheet filed after about 14 years of incident against the principles of natural justice. Moreover, the disciplinary enquiry and criminal proceedings are filed on the same allegation, same facts and same documents as well as prosecution witness hence, causing double jeopardy to the petitioner.

21. The petitioner has by filing the present petition has tried to put the cart before the horse i.e., the present petition has been filed at a premature stage. This Court observes that the present petition is based on the presupposition that respondent will take an adverse action against the petitioner.

22. This Court is of the view that there is no such illegality in the impugned show cause notice which warrants interference of this Court. The show-cause notice is issued by the competent authority on the valid ground that the petitioner was found involved in corrupt practices of seeking and obtaining Rs. 2000/- as illegal gratification from Sh. Varun Rana, (Complainant) for clearing/disposing off four traffic challans illegally and the petitioner was caught red handed by the Anti-Corruption Branch, Delhi.

23. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and therefore, the instant petition is liable to be dismissed.



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24. Accordingly, the instant petition stands dismissed.
25. Pending applications, if any, stands dismissed.
26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 17, 2023

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Click here to check corrigendum, if any

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