



2024:DHC:8300-DB



\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 25.10.2024***

+ W.P.(C) 15064/2024, CM APPL. 63154/2024

SANDEEP KUMAR

.....Petitioner

Through: Mr. Himanshu Gautam, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Bharathi Raju, Adv. for R-1 to R-5.

Ms. Archana Kumari, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed by the petitioner, under Article 226 of the Constitution of India, praying for the following reliefs:-

"a) Issue a writ, order or direction in the nature of certiorari quashing and setting aside the letter dated 16.10.2024 by which the nomination of the Petitioner is sought to be cancelled.

b) Issue a writ, order or direction in the nature of certiorari quashing and setting aside the Impugned letter dated 17.10.2024.

c) Issue a writ order or direction in the nature of mandamus directing the Respondents to allow and relieve the Petitioner to attend the GTO-283 Course in accordance with the order dated 09.10.2024."

2. It is the case of the petitioner that the petitioner was posted as Deputy Commandant, Indian Coast Guard at the Indian Coast Guard Ship (ICGS) Ratnagiri on 12.02.2022. At the said unit, he was



2024:DHC:8300-DB



assigned the duties of a Senior Air Traffic Control Officer (SATCO). By the Commanding Officer's TY Memo No. 73/2024, he was assigned the following duties:-

- “(i) SATCO
- (ii) Divisional Officer AH
- (iii) Secret/Confidential Mail Opening officer
- (iv) Sports Officer”

3. The petitioner claims that by the above order, the then Commanding Officer DIG T. N. Upadhyay authorised the petitioner to act as a signatory for him for official emails.

4. On 03.09.2024, a notification was issued by the Coast Guard Headquarters (in short, 'HQs') calling upon eligible officers to volunteer and apply for the Group Testing Officer (in short, 'GTO')-283 course. The petitioner, through his letter dated 03.09.2024, forwarded his name as a volunteer for the GTO-283 course, and the information for the same was duly acknowledged by the then Commanding Officer DIG T. N. Upadhyay. The Coast Guard HQs, *vide* Order dated 09.10.2024, approved the nomination of the petitioner for the said course.

5. In the meantime, the then Commanding Officer DIG T. N. Upadhyay was transferred for temporary duty to Kochi, and in his place, Mr. Lalit Budakoti, that is, the respondent no. 5 was made the Commanding Officer of the petitioner. The respondent no. 5 carried out a preliminary investigation and held the petitioner guilty of the charge of 'volunteering himself' for the abovementioned course without the concurrence of the Commanding Officer and forwarded the impugned letter dated 16.10.2024 to the Coast Guard HQs,



2024:DHC:8300-DB



seeking cancellation of the nomination of the petitioner for the said course.

6. The petitioner claims that further, by the impugned letter dated 17.10.2024, with a pre-meditated mind of taking disciplinary action against the petitioner, the respondent no. 5 also sought explanation from the petitioner.

7. The petitioner, by a letter dated 21.10.2024, called upon the respondent no. 5 to provide the copies of the rules and regulations, which the petitioner is alleged to have violated while applying for the above mentioned course without the prior approval of the then Commanding Officer. However, apprehending that disciplinary action may be initiated against him and that the nomination of the petitioner for the said course shall be cancelled, the petitioner has filed the present petition.

8. The learned counsel for the petitioner, drawing our reference to the notification dated 03.09.2024, submits that by the said notification, requisition was sought from the male officers to volunteer for the above course. He submits that the said notification did not require any concurrence or consent of the Commanding Officer nor did it require for the application of the officer applying for such course to be forwarded by the Commanding Officer. He submits that, therefore, there can be no misdemeanour alleged against the petitioner for his application to be forwarded himself though claiming the same to be with the concurrence of the then Commanding Officer. He submits that the respondents have not been able to show any rule or regulation, which requires the application of the petitioner for the said course to



2024:DHC:8300-DB



be forwarded through the Commanding Officer.

9. He further submits that the notification dated 03.09.2024 also required the Commanding Officer to report to the Coast Guard HQ if there are no volunteers for undergoing the said course. The learned counsel for the petitioner submits that in the present case, the Commanding Officer did not send any such report to the Coast Guard HQ, thereby clearly showing that the nomination of the petitioner was sent by the concurrence of the then Commanding Officer.

10. The learned counsel for the petitioner, in the alternative, further submits that in terms of the CTM dated 16.08.2024, the then Commanding Officer had authorised the petitioner *inter-alia* as the secret/confidential mail opening officer. The fax message dated 03.09.2024 sent by the petitioner for his nomination to the said course, was with the concurrence of the then Commanding Officer and in exercise of the power and authority that had been vested in him by the then Commanding Officer. He submits that the respondent no. 5 has made the incident report without even inquiring from the then Commanding Officer on whether the petitioner was authorised to send his nomination for the said course. He submits that the respondent no. 5 has, therefore, acted with haste and *mala fide*.

11. The learned counsel for the petitioner then submits that on the Incident Report, only the disciplinary authority can act against the petitioner. For the major penalty, the same would be the Central Government, while for the minor penalty, it would be the Director General. In the present case, the concurrence of the disciplinary authority has not been taken for initiating any disciplinary action



against the petitioner.

12. On the other hand, the learned counsel for the respondents, who appears on advance notice, submits that the Incident Report clearly shows that not only did the petitioner forward his own nomination to the above course, claiming that he was sending it on behalf of the then Commanding Officer, but also, in order to remove a trace of the same, he deleted the forwarded fax from the sent box of the e-mail of the then Commanding Officer. She submits that in any case, it is premature for this Court to enter into this controversy and it should be left to the concerned authorities to determine the same.

13. We have considered the submissions made by the learned counsels for the parties.

14. In the present case, admittedly, the petitioner has sent his own nomination for the said course, claiming it to be sent for and on behalf of the Commanding Officer. The issue whether the application/nomination was or was not to be forwarded by the Commanding Officer, therefore, pails into insignificance.

15. The allegation of the respondents against the petitioner is that though this forwarded fax claims itself to be for and on behalf of the Commanding Officer, it was sent without the approval of the then Commanding Officer. The respondents also claim that in order to delete the trace of sending of the said fax, the petitioner deleted it from the sent box of the email of the Commanding Officer. The plea of the petitioner that the fax nominating him for the said course was sent with the authorisation of the then Commanding Officer is disputed by the respondents.



2024:DHC:8300-DB



16. This Court, in exercise of its powers under Article 226 of the Constitution of India, cannot enter into the determination of such disputed questions of facts.

17. At present, a Show Cause Notice has been issued to the petitioner on the allegations against him, and it shall always be open to the petitioner to reply to the same and raise all his contentions in the said reply. We have no doubt that the respondents will look into his reply with an open mind and conduct a fair inquiry into the same.

18. As far as the submission of the petitioner that the concurrence of the disciplinary authority has not been taken, we are of the view that the appropriate stage has not yet been reached for considering the same.

19. In view of the above, we do not deem it fit to interfere with the proceedings initiated by the respondents, at this stage, leaving it open to the petitioner to raise all his grievances if any adverse action is taken against him at a later stage, in accordance with the law.

20. We make it clear that all our observations made hereinabove are only *prima facie* in nature and shall, in no manner, prejudice the inquiry being conducted into the allegations against the petitioner.

21. The petition along with the pending application is, accordingly, disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 25, 2024/ss/B/SJ

[Click here to check corrigendum, if any](#)