

OD-33

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/48/2024
IA NO: GA/1/2024

UNION OF INDIA & ORS.
VS.
SNEHASISH KAR & ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 21ST MARCH, 2025

Appearance:
Mr. Asok Kumar Chakraborti, ASG.
Mr. Kumar Jyoti Tewari, Adv.
Ms. Amrita Pandey, Adv.
Mr. Aniruddha Tewari, Adv.
..for the appellants

Ms. Debjani Sengupta, Adv.
Mr. Amal Kumar Saha, Adv.
..for the respondent no.1

_THE COURT: This intra-court appeal by the Ministry of Finance, Department of Revenue, Government of India and the Additional Director, Central Government Health Scheme, Government of India is directed against the order dated 19th December 2023 in WPO 1788/2023.

The writ petition was filed by the first respondent herein for issuance of a writ of mandamus to rescind the report submitted by the CBI dated 6th January 2023 which was addressed to the second appellant, namely the

Additional Director, Central Government Health Scheme. Along with the said communication there were annexures which included a CBI report, wherein there were allegations, facts, circumstances and the evidences revealed during investigation along with the recommendations against the accused persons. The communication further states that during investigation of this case, sufficient oral and documentary evidence have come on record against the first respondent/writ petitioner, who was then posted as Senior Health Administrative Assistant in CGHS at Siliguri Unit for initiating RDA Major Penalty against the said official. The Additional Director, CGHS was requested to take action against the said public servant and intimate the CBI of the same. Further it states that CBI report be treated as confidential document and no reference of it be made in any subsequent correspondence with any person. In case any applicant seeks copy of the CBI report or part thereof under the Right to Information Act, views of CBI, ACB, Kolkata should be obtained as per Section 11 of the Right to Information Act before deciding the matter. The challenge to the said communication by the respondent/writ petitioner was on the ground of complete violation of the principles of natural justice and it was a capricious action as no new evidence has been discovered against the respondent/writ petitioner. Further, it is contended that CBI had no jurisdiction to issue the communication in view of the fact that the final report was taken on record by the concerned Court and the alleged proceedings against the respondent/writ petitioner was dropped in its entirety. Therefore, it was contended that the communication is an attempt to overreach its

jurisdiction by acting in colourable exercise to the extent of jeopardizing the service and career of the respondent/writ petitioner. During the pendency of the writ petition, a charge-sheet was issued by the Department to the respondent/writ petitioner under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide a Charge Memo dated 28.11.2023. The writ petitioner filed a supplementary affidavit and sought to challenge the charge memo also in the writ petition and such prayer was acceded to by the learned Single Bench and the same was also considered in the impugned order. When this appeal was heard earlier, an order was passed on 28.2.2024 by which it was held that a writ petition under Article 226 of the Constitution was not maintainable against a charge memo issued under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 considering the fact that there are several remedies available to the respondent/writ petitioner including the remedy of approaching the Central Administrative Tribunal. The Court also noted the fact that earlier the respondent/writ petitioner had challenged the order of removal from service dated 4th July, 2023 by approaching the Central Administrative Tribunal, Kolkata in OA 350/00961/2023, which was disposed of by order dated 12th September, 2023. Taking into consideration of all these facts, this Court in the said order dated 28th February, 2024 held that the writ petition was not maintainable against a charge memo. The operative portion of the order reads as follows :

“After we have heard the learned Additional Solicitor General for the appellant and the learned Advocate appearing for the respondent, we are of the clear view that a challenge to the charge memorandum issued under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 by a Central Government employee in the writ petition under Article 226 of the Constitution before this Court is not maintainable. The writ petitioner being a Central Government employee, if aggrieved by any disciplinary action initiated by the disciplinary authority, it will be well open to the concerned employee to work out his remedies in accordance with the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 by way of approaching authority or otherwise or if any order is passed to the detriment of the employee, remedies available before the Central Government Administrative Tribunal. While on this issue we also express serious doubt as to whether at all a challenge could be entertained to a charge memorandum but, however, since we are holding that the writ petition is not maintainable against a charge memorandum, we leave this issue open. That apart, it is not as if the writ petitioner was not aware of the legal position because the writ petitioner had earlier challenged an order of removal from service dated 4.7.2023 before the Central Administrative Tribunal, Kolkata Bench in OA 350/00961/2023 and by an order dated 12.9.2023 the learned tribunal allowed the OA setting aside the order of punishment of removal from service dated 4.7.2023 and the order of the appellate authority upholding the decision of the disciplinary authority qua the writ petitioner and granted liberty to the disciplinary authority to take further action in the matter in accordance with law. Thus, if such liberty has been granted to the disciplinary authority or the appellants/department, the question would be as to whether a challenge to the charge memorandum dated 28.11.2023 could be entertained. Thus, we are of the clear view that the challenge to the charge memorandum dated 28.11.2023 could not have been entertained more particularly by way of a supplementary affidavit.

Therefore, the order passed by the learned Single Bench to that extent is set aside giving liberty to the writ petitioner to work out his remedies against the charge memorandum in the manner known to law. With regard to the other aspect, as to whether the writ petition is maintainable against the communication sent by the CBI dated 6.1.2023, we are inclined to entertain this appeal and hear the matter on merits. Therefore, that portion of the order passed by the learned Single Bench setting aside the communication of the CBI dated 6.1.2023 shall remain stayed and also the order imposing cost of Rs.50,000/- shall also remain stayed.”

Thus, what remains in this writ petition is whether the communication sent by the CBI dated 6th January 2023 to the second appellant was within their jurisdiction or not sustainable for the reasons set out by the respondent/writ petitioner.

When this appeal was heard earlier, the learned Additional Solicitor General also raised the question of jurisdiction of the concerned learned Single Bench which heard the matter by contending that the writ petition would not fall within the Group-IX classification which was being dealt with by the learned Single Bench at the relevant time particularly, on 19th December 2023. In this regard, the cause list of 19th December, 2023 as well as the partial modification/clarification notification issued on 30th September 2022 was referred to. In support of his contention, the learned ASG placed reliance on the decision of the Hon’ble Supreme Court in *State of Rajasthan vs. Prakash Chand & Others*, (1998) 1 SCC 1, wherein the Hon’ble Supreme Court held that the administrative control of the High Court vests in the Chief Justice of the

High Court alone and that it is his prerogative to distribute business of the High Court both judicially and administratively. He alone has the right and power to decide how the Benches of the High Court are to be constituted, which Judge is to sit alone and which cases he is required to hear as also to which Judges shall constitute a Division Bench and what work those Benches shall do. It was further held that the Judges of the High Court can sit alone or in Division Bench and do such work only as may be allotted to them by an order or in accordance with the direction of the Chief Justice. As could be seen from the notification dated 30.9.2022, matters relating to CBI and Central Agencies in writ petition under Article 226 of the Constitution of India have been included within the comprehensive reading of subject category 'Police' in the Appellate Side Rules and, therefore, there was no need to mention CBI and Central Agencies separately and, accordingly, the same was deleted. Thus, a reading of this notification would show that the Group – IX classification which deals with residuary matters would cover cases other than cases which would fall under the category 'Police' which includes CBI and Central Agencies. Therefore, on the relevant date the concerned Court did not have the determination to deal with a matter concerning CBI or any Central Agency. As pointed out earlier, the challenge in the writ petition is to a communication issued by the CBI to the CGHS. Therefore, this would fall within the category 'Police'.

Faced with the above situation, the learned advocate appearing for the respondent/writ petitioner submitted that the writ petitioner may be permitted

to withdraw the writ petition and file a fresh writ petition on the same cause of action which may be heard by the Hon'ble Court having determination. The learned Additional Solicitor General appearing for the appellant submitted that such prayer can be considered with the leave of the Court and if this Court decides to grant such liberty, it may do so.

Another submission made by the learned advocate appearing for the respondent/writ petitioner is that the earlier order passed by the Division Bench dated 28.2.2024 whereby it was held that the writ petition was not maintainable against the charge memorandum may be set aside. This prayer cannot be acceded to and the prayer is rejected as it has been held in no uncertain terms that the writ petition was not maintainable as against the charge memorandum. Therefore, even if liberty is granted, liberty should be restricted only to the challenge to the communication of the CBI to the CGHS.

In the light of the above, the order passed in the writ petition is set aside and the writ petitioner is permitted to withdraw WPO 1788/2023 which stands dismissed as withdrawn with liberty to the respondent/writ petitioner to file a fresh writ petition on the same cause of action, namely, with regard to the correctness of the communication sent by the CBI to the CGHS. Needless to state that if a challenge is made by way of a fresh writ petition, the matter shall be heard by the Hon'ble Bench having determination to hear 'police matters'.

In the light of the above, the cost of Rs.50,000/- imposed on the appellant is set aside.

With the above directions, the appeal stands disposed of.

The stay application being IA No : GA/1/2024 is also disposed of.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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