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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.210/005/2020

Date of decision: 03.01.2020

CORAM:- R. VIJAYKUMAR, MEMBER (A) .
R.N. SINGH, MEMBER (J) .

Pankaj Garg
Aged-55 years
S/o Sr Jagdish Chand Garg,
Address 1604 mirabilis
Nahar Amrit Shakti
Chandivali Andheri East
Mumbai 72.

... Applicant.

(By Advocate Shri Rajeev Kumar)

VERSUS.

1. Union of India through Secretary
Ministry of Defence,
Department of Revenue,
North Block, New Delhi-110001.
2. Under Secretary, (V&L)
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.
3. Principal Chief Commissioner of
Income Tax, Aayakar Bhawan,
12 Sadhu Vaswani Square
PUNE-411 001.

.... Respondents.

O R D E R (O R A L)

Per: R. N. SINGH, MEMBER (J)

1. When the case is called out, Shri Rajeev

Kumar along with Ms. Chetana Gaikwad, learned counsels appeared for the applicant.

2. Heard the learned counsel for the applicant.

3. This OA has been filed on 30.12.2019 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) That this Hon'ble Tribunal will be graciously pleased to call for the records and proceedings leading to the issue of the impugned Memorandum of Memorandum issued under rule 19 (i) of CCS (CCA) dated 14th August 2018 issued by Under Secretary to Government of India D.No.C-13011/1/2007 - V & L (pt II) and after going through the legality or otherwise thereof, this Hon'ble Tribunal will be pleased to quash and set aside the same.

(b) That in the alternative to prayer clause (a), this Hon'ble Tribunal will be pleased to stay the impugned proceedings under initiated vide impugned Memorandum issued under rule 19 (i) of CCS (CCA) dated 14th August, 2018 issued by Under Secretary to Government of India F.No.C-13011/1/2007-V & L (Pt II), and further direct the Respondents not to proceed with the said impugned Memorandum 14th August, 2018 pending the hearing and final disposal of Appeal before Hon'ble High Court of Bombay vide Criminal Appeal No.730 of 2017.

(c) That in the alternative to prayer clause (b), this Hon'ble Tribunal will be pleased to stay the impugned proceedings under initiated vide impugned Memorandum issued under Rule 19 (i) of CCS (CCA) dated 14th August, 2018 issued by Under Secretary to Government of India F.No.C-13011/1/2007- V&L (pt II) till the conclusion of Enquiry initiated by the Respondents vide Memorandum of Charges under Rule 14 of CCS (CCA), 1965.

(d) That in the alternative to prayers aforesaid, this Hon'ble Tribunal may kindly be pleased to direct the respondents to send representation dated 21.11.2019 to UPSC, the statutory body for advice before imposing any penalty on Applicant for its consideration.

(e) That costs of this Application be awarded in favor of the Applicant; and

(f) That such other and further reliefs as are expedient be granted in favor of the Applicant."

4. The learned counsel for the applicant submits that the respondents have issued a memorandum of charge dated 14.08.2018 (Annexure A-1) to the applicant under Rule 19 (i) of the CCS (CCA) Rules 1965 on the basis of the judgment of the Learned Special CBI Court and invited the applicant to file a representation within 15 days

of receipt of such memorandum. The applicant filed two representations to this memorandum following receipt of advice from the UPSC. The respondents have thereafter issued a further memorandum on 09.12.2019 (Annexure A-9) on their proposed punishment and have asked the applicant to file his reply within 15 days from the date of receipt of such memorandum and they have also enclosed the UPSC advice dated 20.11.2019 alongwith this memorandum.

5. The applicant is yet to file reply to the aforesaid memorandum dated 09.12.2019 and meanwhile, has approached this Tribunal by way of this OA.

6. The learned counsel for the applicant submits that the respondents before issuing the impugned memorandum have not sent all his three representations to the UPSC to solicit their advice. However, it is an admitted fact that the applicant has not preferred the reply after receipt of a copy of the UPSC advice through the respondents. It is settled law that mere issuance of a show cause notice/charge memo does not give

a cause of action unless and until the same is issued by an Authority, not competent for the purpose or is the result of malafide. In this regard, we may refer and rely on the law laid down by the Hon'ble Apex Court in the case of Union of India Vs. Kunisetty Satyanarayana, reported in (2006) 12 SCC 28, decided on 22.11.2006, paras 13 and 14 of which reads 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 vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghous and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another 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 lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. 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."

7. In the present case, none of these two aspects are available. although the learned counsel for the applicant submits that the impugned memorandum has not been issued by the Competent Authority. However, on perusal of the memorandum dated 14.08.2018 (Annexure A-1), it is evident that the same has been issued by order and in the name of the President and admittedly the President is the Competent Disciplinary Authority in the case of the applicant.

8. Moreover, all these points can very well be taken up by the applicant in his reply to the Disciplinary Authority.

9. At this stage, the learned counsel for the applicant under instructions from the

applicant who is present in the Court submits that the OA may be disposed of with liberty to the applicant to file appropriate reply to the Competent Disciplinary Authority within a week from today and in case, such reply is filed by the applicant, the Competent Disciplinary Authority may be directed to consider the same and pass appropriate orders in a time-bound matter.

10. In the facts and circumstances, we are of the considered view that, even at his stage without notice to the respondents, if such request of the applicant is accepted, no prejudice is likely to be caused to the respondents.

11. In the facts and circumstances, without going into the merits of the claim of the applicant, the OA is disposed of with liberty to the applicant to prefer an appropriate reply to the respondents within a week from today and in case such reply is received by the Competent Authority within a week from today and if no final order has yet been passed the respondents

are directed to consider the same keeping in view the relevant rules and instructions and dispose of the same by passing a reasoned and speaking order as expeditiously as possible and in any case within four weeks from the date of receipt of a certified copy of this order.

12. The OA is disposed of in the aforesaid terms. No order as to costs.

(R.)

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.