

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.No.210/806/2019

Date of decision : 06th February, 2020.

Coram: Dr.Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).

Navin Jambulkar,
Age: 47 years, Occ. Service,
Working as DDM (PLI),
O/o Chief Post Master General,
Maharashtra Circle, Mumbai-01
R/at: H-31, Hyderabad Estate,
Nepean Sea Road,
Mumbai - 400 026. .. Applicant.

(By Advocate Shri S. P. Dighe).

Versus

1. Union of India,
Ministry of Communication,
Department of Post,
Through its Secretary,
Office at Dakbhavan,
Sansad Marg, New Delhi-110 001.
2. Assistant Director General,
Vigilance Department of Post,
Dakbhavan, Sansad Marg,
New Delhi - 110 001.
3. The Office of Post Master General,
Maharashtra Circle,
Mumbai - 400 001. .. Respondents.

O R D E R (O R A L)
Per : R. N. SINGH, Member (JUDICIAL)

Present.

1. Shri S. P. Dighe, learned counsel for the

applicant.

2. Heard the learned counsel for the applicant on admission.

3. The applicant has filed the present OA under Section 19 of the Administrative Tribunal Act, 1985 to challenge the show cause notice dated 16.09.2019, forwarded to him by the authority concerned vide order dated 19.09.2019 (Annexure A-1) and has prayed for the following reliefs:

"8a. That the notice dated 19.09.2019 issued by the Assistant Post Master General (Vigilance) Maharashtra Circle, Mumbai alongwith the Memorandum dated 16.09.2019 issued by the Respondent No.2 as well as the notice dated 02.04.2019 issued by the Assistant Post Master General (Vigilance) Maharashtra Circle, Mumbai alongwith the Memorandum dated 28.03.2018 be quashed and set aside.

8b. Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal may kindly be pleased to stay the effect and implementation of the notice dated 19.09.2019 issued by the Assistant Post Master General (Vigilance) Maharashtra Circle, Mumbai alongwith the Memorandum dated 16.09.2019 issued by the Respondent No.2 as well as the notice dated 02.04.2019 issued by the Assistant Post Master General (Vigilance) Maharashtra Circle, Mumbai alongwith the Memorandum dated 28.03.2018 may kindly be stayed.

8c. Interim /Ad-interim order in terms of prayer clause (8b) above;

8d. Any other relief as this Hon'ble Tribunal deems fit and proper in the interest of justice."

4. The impugned show cause notice has been issued by the concerned authority by invoking the jurisdiction of Rule 19 of the CCS (CCA) Rule, 1695 keeping in view the fact that the order dated 03.03.2018 of the Learned Special Judge (CBI) Greater Bombay in the CBI Case No.89 of 2009 in RC.36(A)/2008, has been found guilty and convicted for the commission of offences punishable under Sections 7 and 8 and Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment as under, which shall run concurrently along with fine:

Offences Punishable U/s	Punishment
7 of PC Act, 1988	Four Years RI and Fine of Rs.25000/-
8 of PC Act, 1988	Four years RI and fine Rs.25000/-
13(2) r/w 13(1)(d) of the PC Act, 1988	Four years RI and fine of Rs.25,000/-

5. The applicant was issued a show cause notice and after receipt of his reply the Competent Authority has consulted the UPSC and on

receipt of advice of UPSC the impugned show cause notice issued issued to the applicant providing therewith a copy of the UPSC advice and calling upon him within a period of 15 days to submit his defence/submissions. It is admitted case of the applicant that the said show cause notice has been issued by the Competent Authority and he is yet to file reply/response thereto.

6. It is well settled that ordinarily no writ lies against a charge-sheet or show cause notice. In this regard, we place reliance to the law laid down by the Hon'ble Supreme Court in Union of India Vs. Kunisetty Satyanarayana, AIR 2007 SC 906, Paras 11 to 15 of which reads as under"

"11. Instead of replying to the aforesaid Charge Memo, the respondent filed an OA before the Central Administrative Tribunal, Hyderabad which was disposed of vide order 15.3.2004 with the direction to the applicant to submit his reply to the Charge Memo dated 23.12.2003 and on submission of the said reply the Disciplinary Authority should consider the same. Instead of filing any reply the respondent filed a Writ Petition in the High Court which has been allowed, and hence this appeal.

12. In our opinion, the High Court was not justified in allowing the Writ Petition.

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.

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."

7. There is admitted fact that the applicant is yet to file his reply to the impugned show-cause notice. In place of filing his response(reply to the show-cause notice, he has rushed to this Tribunal vide the present OA.

8. In view of the aforesaid facts and law laid down by the Hon'ble Apex Court in the case referred to above, we are of the view that the OA is without any cause of action and it is thus devoid of any merit.

9. The OA is accordingly dismissed. However, in the facts and circumstances, no order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

v.

SD
12/02/2020