

**Reserved on 19.10.2020**

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD**

**(This the 20<sup>th</sup> Day of November, 2020)**

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)  
Hon'ble Mr. Anand Mathur, Member (Administrative)**

**Original Application No.330/587/2020**

Prabhakar Kumar aged about 23 years, Son of Pramod Kumar, Resident of Village and Post – Pakri, District – Nalanda, State of Bihar – 801304.

..... **Applicant**

**By Advocate: Shri Dharmendra Tiwari**

**Versus**

1. Union of India through Secretary, Department of Personnel and Training, Govt. of India, New Delhi.
2. The Staff Selection Commission, through its Chairman, Block No.12, CGO Complex, Lodhi Road, New Delhi.
3. The Regional Director, Staff Selection Commission (Central Region), Kendriya Sadan, 32-A, Mahatma Gandhi Marg, Allahabad – 211001.
4. The Deputy Director, Staff Selection Commission (Central Region), Kendriya Sadan, 32-A, Mahatama Gandhi Marg, Allahabad 211001.

..... **Respondents**

**By Advocate: Shri A.K. Sinha**

**O R D E R**

**Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)**

We have heard Shri Dharmendra Tiwari, Advocate for the applicant and Shri A.K. Sinha, learned counsel for the respondents, on admission and on the prayer for interim relief and have perused the record.

2. The applicant by means of this Original Application has challenged the impugned show cause notice dated 17.08.2020,

whereby the respondents have 'requested' him to submit his written explanation showing the reasons as to why his candidature may not be cancelled for the Multi Tasking (Non Technical) Staff exam 2016, on account of malpractice and impersonation.

3. At the very outset, a preliminary objection has been raised by learned counsel for the respondents regarding the maintainability of the instant OA, by submitting that the OA is premature, as the applicant has rushed to this Tribunal without submitting his written explanation as required by the show cause notice.

4. It is also contended by learned counsel for the respondents that the applicant has approached this Tribunal without exhausting the alternative remedy of replying to the impugned notice. Therefore, the OA is liable to be dismissed as premature.

5. To the contrary, learned counsel for the applicant has opposed the preliminary objection by contending that the impugned 'show cause notice' clearly shows that the respondents have made up their minds to cancel the candidature of the applicant.

6. We have given our thoughtful consideration to rival contentions of learned counsel for the parties.

7. A perusal of the averments made in the OA show that although in Para 4.9 of the OA, the applicant has stated that the applicant had gone to the Staff Selection Commission Office and had submitted his reply to the same, vehemently denying the allegations levelled

against him and he had also requested for a test from an expert body at his own expenses, but the applicant has not annexed any copy of his written explanation, filed in reply to the show cause notice, in the office of the respondents, despite the fact that he has filed several other documents including the application form, admit card, letter of documents verification etc, as annexures in the instant OA

8. In absence of any proof about the fact that the applicant had actually filed any written reply to the impugned notice, as was required by the department, it cannot be said that he has earlier exhausted the alternative remedy available to him before approaching this Tribunal.

9. Admittedly, the applicant in this OA, has challenged the legality of show cause notice dated 17.08.2020 (Annexure A-1) and has prayed to quash the same. The Hon'ble Apex Court in a large number of cases has deprecated the practice of courts entertaining the cases questioning legality of show cause notices. According to well settled legal position, the courts should not interfere in cases where the legality of show cause notice has been challenged unless the notice is totally *non est* in the eyes of law for absolute want of jurisdiction of the authority who has issued the notice.

10. In **Union of India and another vs. Vicco Laboratories, reported in 2008(2) CTC 511**, the Hon'ble Supreme Court has held that :

*“Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be *prima facie* established to be so. Where factual adjudication would be necessary, interference is ruled out.*

**11.** Further, in the case of **Union of India v. Kunisetty Satyanarayanan, reported in (2006) 12 SCC 28**, the Supreme Court has held that ***“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.***

**12.** In view of the well settled legal position and law as laid down by Hon'ble Apex Court in the above cited judgments, the OA is liable to be dismissed at the admission stage itself and is accordingly dismissed.

**13.** There will be no order as to costs.

<b>(Anand Mathur)</b> Member (A) <u>Sushil</u>	<b>(Justice Vijay Lakshmi)</b> Member (J)
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