

क.प्र.प्र. (प्राक्षया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्राप्त

Central Administrative Tribunal  
Jodhpur Bench, Jodhpur.

OA No. 56/2011 &  
OA No. 62/2011

Reserved on : 03.02.2012  
Pronounced on: 30.05.2012

Hon'ble Shri Sudhir Kumar, Member (A)

Sh. Leeladhar Sharma,  
S/o late Sh. Sita Ram Sharma,  
R/o 31, Post & Telegram Colony,  
Hiran Magri, Sector No.4,  
Udaipur.

..... Applicant  
In both OAs

(By Advocate: Mr. Sandeep Shah)

Versus

1. Union of India through  
The Secretary to the Government,  
Ministry of Communication [Department  
of Post], Sanchar Bhawan, New Delhi.
2. Chief Post Master General,  
Rajasthan Circle, Jaipur.
3. Post Master General,  
Rajasthan Southern Region,  
Ajmer.

Sr. Superintendent of Post Offices,  
Udaipur Division, Udaipur.

Sh. S.N. Joshi posted as  
Sr. Superintendent of Post Offices,  
Udaipur Division, Udaipur.

..... Respondents  
In both OAs

(By Advocate: Mr. Ankur Mathur for  
Mr. Vinit Mathur for R 1 to 4 and  
Mr. Lokesh Mathur for R-5)



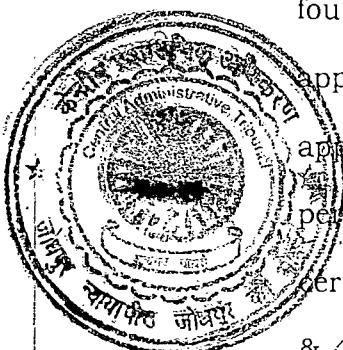
**O R D E R**

Both these Original Applications of the same applicants came to be heard together and reserved for orders together, and, therefore, are being disposed of through a common order, though they were argued separately one after the other, and in the second OA, the learned counsel for the private Respondent/Respondent No.5 had also submitted his arguments separately.

2. For the sake of convenience, therefore, the facts of the two cases can also be discussed separately.

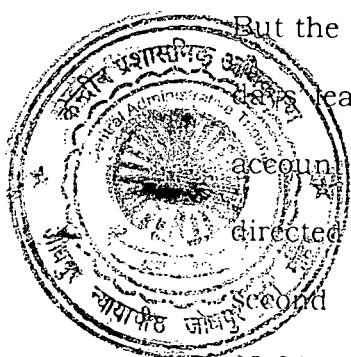
**OA-56/2011**

3. This OA has been filed by the applicant being aggrieved by the order at Annexure A-1 dated 04.02.2011 through which the respondent department had issued him a Show Cause Notice under Rule 16 of CCS (CCA) Rules, 1965, proposing to take disciplinary action against him on the ground that ever since he had been shifted from the Business Development (BD, in short) branch of the post office to another, he has continued to bring outside influence for his posting back in the BD branch, violating Rule 20 of the CCS (Conduct) Rules, 1964, and even the names of four persons, who were alleged to have spoken on behalf of the applicant had been mentioned in the Show Cause Notice. The applicant had submitted that he has been an outstanding performer within the department, and had annexed even certificates of appreciation etc., issued to him as Annexures A-2, 3 & 4 from pages 21 to 32 of the OA, and submitted that he was so good in his work that vide order dated 17.07.2009 (Annexure A-5), it was ordered that his services were to be used as a Master Trainer and train the Postal Assistants handling the Passport



processing and Systems Management of the three regions for a few days at Ajmer, which was repeated again on 18.12.2009.

4. However, in the meanwhile, through order dated 22.06.2009 (Annexure A-6), he was transferred from the post of Postal Assistant at Udaipur Head Office to the post of Postal Assistant, Udaipur City Palace Extension Counter, but the same was modified through Annexure A-7, and his term at Udaipur Head Office was extended for one more year. On 19.04.2010, through Annexure A-8, he made a prayer for being allowed joining as In-charge, City Palace Extension Counter at Udaipur, but when no action had been taken for many months, thereafter he again repeated his request on 08.01.2011. In between he had applied leave for 10 days from 29.12.2010 on the basis of medical certificate at Annexure A-9 on account of Bronchial Asthma. However, he was referred for a second medical opinion by the Sr. Supdt. of Post Offices through Annexure A-10 dated 04.01.2011.



But the same earlier Doctor recommended for grant of further ten days leave to him through medical certificate dated 15.01.2011 on account of Sinusitis and Bronchial Asthma. He was then again directed through Annexure A-12 dated 20.01.2011 to appear for a second medical opinion before a Board, which was held on 20.01.2011, and the Medical Board certified that he was suffering from Bronchial Asthma and Allergic Rhinitis in the seasonal presentation of these diseases since last 7-8 years, and was at that time suffering from Bronchial Asthma, URI Maxillary Sinusitis, and was under treatment for the last 20 to 25 days, and that he needed

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further treatment in future. He thereafter applied and was sanctioned 15 days' Earned Leave w.e.f. 21.02.2011, while at the same time the respondents had allegedly ignored the opinion of the Medical Board, and had issued him a Memo dated 04.02.2011, impugned at Annexure A-1.

5. The applicant ascribed his troubles to be on account of Private Respondent No.5 Shri S.N. Joshi, Sr. Superintendent of Post Office, Udaipur, and made an allegation that this trouble had started when on 18.12.2010, the Private Respondents No.5, Shri S.N. Joshi, had joined on his post, and on the same date, he came to the applicant's office and told him that his name was quite well known for providing online Passport services, and had asked from him as to how much money he earned upon each Passport processed by him. The applicant stated that he retorted that he does not take any bribe, but the Private Respondent/Respondent No.5 got annoyed, and told him that he knew very well as to how much money the applicant earned in this manner, and had asked a monthly amount of Rs.15,000/- being paid as bribe to him, failing which he had threatened to spoil the service career of the applicant, and further threatened that even prior to his retirement on 31.05.2011, he will see to it that the applicant suffers the consequences for not paying the bribe to him. The applicant has ascribed the actions on the part of the respondents in seeking second medical opinion, and constitution of the Medical Board, as being borne out of malice and ill-will. He submitted that malice on the part of the respondents can be seen to be proved on the basis of the fact that the charge sheet dated 04.02.2011 was sent to the

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applicant through the Post Office on Saturday of 05.02.2011, even though the Saturdays are holidays in the respondent department, as is evident at Annexure A-15 (pages 46 & 47 of the OA). He further submitted that in spite of knowing that the applicant was ill, and was undergoing treatment, and was on leave for that, the respondents had issued the impugned charge sheet, which was vague in nature, and the allegation against him was such that it even does not amount to misconduct. He had, therefore, prayed for the impugned charge sheet to be set aside, since he had neither made any efforts, nor asked any of the persons named in the charge sheet to pursue his case for transfer, and had, therefore, prayed that the OA be allowed, and the impugned charge sheet issued through Annexure A-1 be quashed and set aside, apart from providing any other reliefs and costs in his favour.



6. The respondents stoutly defended their actions. It was submitted by the respondents that the applicant was transferred as In-charge, Extension Counter at City Palace Udaipur, vide Memo dated 22.06.2005, where he joined on 30.06.2009, but then he applied extreme pressure through many individuals, organizations and departments, to get his transfer back to Udaipur Head Post Office, in the Business Development branch. As a result, in compliance of the order subsequently passed on 06.07.2009, the applicant was allowed to re-join back at Udaipur Head Office as Postal Assistant on 07.07.2009 for one year extended tenure, which was completed on 06.07.2010. But his

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work was not satisfactory, and he was even warned in respect of his negligence through order dated 02.10.2010. It was stated that the achievement of the target of Business Development Branch fell to Rs.2.4 Crore against the target of Rs.6.15 Crore and apprehensions were raised regarding leakage of revenue and the matter was referred to a senior officer for detailed enquiry, and the applicant's charge was changed within the Post Office, in a routine course, which implied no change of duty hours/station, but still he tried to apply pressure. While accepting that the applicant had in the past been awarded cash prices for his service in the area of online Passport Services, it was submitted that he has, on the other hand, not been performing properly his main duty in the Business Development branch. It was further submitted that every month the respondents department has paid a cash incentive to the applicant for his work of processing of Passport applications @ Rs.5/- per Passport applicant, and 50 Paisa for each speed post articles, handled during his duty hours, and therefore, the applicant cannot allege any malice or mala fide, and even the transfer now proposed to the City Palace Extension Counter, Udaipur, will not have any adverse impact on his family, or any hardship to them, since the branch working timings are the same. It was further submitted that many a times the offices of the respondent department are opened on Saturdays, and even on Sundays, and, therefore, there was nothing wrong in the charge sheet issued on 04.02.2011 having been dispatched to the applicant on the Saturday on 05.02.2011. It was submitted that the applicant has been working in the Business Promotion branch



since 15.04.2005, but has failed to maintain proper record, which has led to loss of revenue on account of non-maintenance of proper records by the applicant. They had, therefore, justified the issuance of the charge Memo, and had prayed that the OA be rejected.

7. Private Respondent No.5 had in a separate affidavit denied all allegations of malice. He had submitted that he joined duty at Udaipur on 15.12.2010, and since had never worked at Udaipur earlier, he visited various branches and Business Post Centre branch on 18.12.2010, when same irregularities were noticed by him. Therefore, he entrusted an enquiry to be conducted by the Assistant Superintendent of Post Office, Udaipur, but when the applicant tried to prevent such an enquiry taking place, and brought pressure upon him, he was forced to issue the impugned charge sheet dated 04.02.2011 under Rule 16 of the CCA (CCA) Rules, 1965. He had totally denied ever having made any demand of bribe from the applicant, and had termed it as a story concocted to circumvent the inquiry already initiated against him. On the other hand, it was submitted that he had become a victim at the hands of the present applicant, who had sent a false complaint on 17.02.2011 to the Inspector General of Police, Udaipur. Therefore, he had also prayed for the OA to be dismissed with costs.

8. The applicant thereafter filed a rejoinder on 19.10.2011. He denied that any target for business development had ever been assigned to him, and which he had failed to achieve. Reiterating

most of his contentions as per his submissions in the OA, he had prayed that the various appreciation certificates and recommendations issued in his favour should be weighed against the vague charges raised against him in the charge memo, and had submitted that on the basis of his complaint filed against Private Respondent No.5 Shri S.N. Joshi, the learned Special Judge (Prevention of Corruption cases), Udaipur, had on 31.05.2011 directed the authorities to conduct an investigation. It was, therefore, reiterated that the OA may be allowed. Some more testimonials and certificates had been attached by the applicant with his rejoinder from Annexure A-17 onwards, to try to prove his case.

**OA-62/2011**

9. The applicant has in this OA impugned the second charge sheet dated 04.02.2011 containing a statement of imputations of misconduct or misbehaviour against him in regard to the work turned out by him, wherein it was indicated that due to his negligence, the applicant had caused a loss of revenue of Rs.77,049/20 in the shape of the various service charges, which ought to have been collected by him and credited into Government account. Once again enclosing all the letters of appreciation and the letters regarding his deputation as a Master Trainer, who train the Postal Assistants in Passport processing and Systems Management, the applicant had sought shelter behind the same sequence of his reporting his illness, and second medical opinion being sought, and his facing a Medical Board. It the result, it was prayed that the OA be allowed and the impugned notice of



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proposed second departmental enquiry under Rule-16 of the CCS (CCA) Rules, 1965, may also be set aside.

10. The respondents once again cited the pressure brought by the applicant, in a similarly worded reply as compared to the earlier OA. They had tried to prove the indiscretion and mistakes committed by the applicant. While the other averments need not be reproduced here for the sake of brevity, the respondents had submitted finally that non-maintenance of proper records of the Business Post Centre, Udaipur Head Office, by the applicant had led to revenue loss, which needed to be proved, and had submitted that the impugned Annexure is only the proposed Charge Sheet, and no punishment has yet been given to the applicant. Any mala fide intention on the part of Respondent No.5 had also been denied, and it was prayed that the second OA may also be dismissed with costs.

11. The Private Respondent/Respondent No.5 had filed a similarly worded reply written statement in this OA also, which need not be discussed here again for the sake of brevity. The applicant filed a rejoinder thereafter, more or less reiterating his contentions, and had submitted that any contention on the part of the respondents that his actions had led to the leakage of revenue was wrong, as the recommendation made for considering his case for Meghdoot award to him would itself reveal that he was the same person, who had stopped the revenue leakage amounting to Rs.2,13,024. He had pointed out that a criminal case had been lodged against Private Respondent/Respondent No.5 for illegally

running a chit fund, and for the offences punishable under the Prevention of Corruption Act. He had enclosed a copy of the Meghdoot Award recommendation made on 22.10.2009, giving his achievements and other similar documents.

12. Heard. During the arguments on both these cases, the learned counsel for the applicant again emphasized that the two charge sheets were vague and when the applicant had been appreciated thrice for stopping revenue leakages, and had been cited for Meghdoot Award, he could not be held to be responsible for leakages of revenue. It was further submitted that no influence was brought about, but he had only filed representations for consideration by the respondent authorities.

13. The learned counsel for the respondents submitted that no lacuna has been pointed out by the applicant in the process of decision making. It was submitted that instead of replying to the Charge Sheets, the applicant has rushed to this Tribunal, and it was argued that it was pre-mature for this Tribunal to interfere in the process of the disciplinary enquiry.

14. The learned counsel for the respondent No.5 had totally denied any wrong doing on the part of the private respondent/Respondent No.5, and had submitted that he had joined at Udaipur, only on 15.12.2010, conducted the inspection of the applicant's branch on 18.12.2010, and the applicant was thereafter transferred on 20.12.2010. Within a couple of months, on 30.05.2011, the Private Respondent/Respondent No.5 had



the applicant's branch on 18.12.2010, and the applicant was thereafter transferred on 20.12.2010. Within a couple of months, on 30.05.2011, the Private Respondent/Respondent No.5 had retired on superannuation, and no bias could have been alleged to have generated in the mind of Private Respondent/Respondent No.5 in the first meeting with the applicant on 18.12.2010, just within three days of joining his post at Udaipur, as a result of which, the allegations made by the applicant against the Private Respondent/Respondent No.5 were totally denied.

15. In his submissions, the learned counsel for the applicant had relied upon the case of Sukhraj Singh Vs. The High Court of Judicature of Rajasthan and Ors. 1988 (2) WLN 203 and the case of State of Punjab Vs. V.K. Khanna & Ors. 2000 (7) SCALE 731. In his reply arguments, learned counsel for the official respondents had relied upon the following cases:-

- i) Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906;
- ii) Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and others, AIR 1996 SC 691;
- iii) Special Director v. Mohd. Ghulam Ghous, AIR 2004 SC 1467.

16. In Para-21 of the judgment in Sukhraj Singh Vs. The High Court of Judicature for Rajasthan and Ors. (supra) the Hon'ble High Court of Rajasthan had laid down the law as follows:-

"21. In our view, it cannot be laid down as a rule of law that the High Court has no jurisdiction under Article 226 of the Constitution of India to entertain a writ petition against the issuing of charge-sheet. **The High Court can entertain a petition under Article 226 against the issue of a charge-sheet, if the charges are found to be groundless or void ab initio or when such charge-sheet has been issued without jurisdiction or is capricious or mala fide**

use of power or on baseless grounds and there has been total non-application of mind. It is no doubt correct that the High Court will not substitute its own judgment or sit in appeal unless a finality is reached by exhausting all the remedies available to the public servant under the relevant service Rules. **But where the charges are found to be groundless or void ab initio or on baseless grounds or there is no iota of evidence to frame such charges or there is non-application of mind of the disciplinary authority to the admitted facts, this court can certainly pass suitable orders in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution".**

(Emphasis supplied).

17. The learned counsel for the applicant submitted that this Tribunal could also similarly pass suitable orders setting aside the present charge sheets, since the charges raised against the applicant are groundless and void ab initio. However, it is seen that the Hon'ble High Court had stated that such extra ordinary jurisdiction can be exercised only if the charges are found to be groundless or void ab initio, or when the charge sheet has been issued without jurisdiction, and there has been total non-application of mind, a judicial interference is called for. To my mind, it has yet to be determined whether the charges are groundless or not, as such mixed questions of law and facts can be proved or disproved only after conducting a proper disciplinary enquiry. Here, in this case, it is not the case that the authority, who has issued these two charge Memos, did not have any jurisdiction to do so, and the weight of the grounds taken by the respondents, or their baselessness, can be established only after a proper enquiry is conducted. Therefore, the applicant cannot be



allowed to draw any benefit from the above cited judgment of the Hon'ble Rajasthan High Court, Jaipur Bench.

18. In the case of State of Punjab vs. V.K. Khanna (supra), it is seen that the Hon'ble Apex Court was considering the cases in which the charges of mala fide and utter disregard of Rules, principles of objectivity, fair play, integrity and high morals expected of civil servants, had been levelled against the respondent, who was the Chief Secretary when the Government changed. The Hon'ble Apex Court had set aside the charge sheet, and quashed the proceedings against the petitioner, and had held that the charge sheet seemed to arise out of initiation of CBI enquiry against the senior civil servant on the directions of the new Chief Minister. The Hon'ble Apex Court had analyzed the total factual matrix, and, in an extra ordinary manner, it had itself held the respondent civil servant not guilty of the offences charged with.

In holding so, the Hon'ble Apex Court had stated as follows:-

 "37. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to

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examine the judicial propriety at this stage of the proceedings.

19. While the Hon'ble Apex Court could in the exercise of its extra ordinary powers hold that in the event that there is an averment of mala fide or motive involved in the matter of issuance of a charge-sheet, and the concerned authority is so biased that the enquiry would be a mere farcical show, and the final conclusions are well known in advance, it had exercised its supreme discretion to interfere at the earliest stage of the disciplinary enquiry, so as to avoid harassment and humiliation of a public official. However, that level of extra-ordinary and supreme judicial powers is not available to this Tribunal. Just on account of some unproven vague allegations of mala fide, which have been effectively controverted by the higher officer concerned, and in the absence of any evidence to the contrary, I find it difficult that this Tribunal can hold that mala fide and motive were necessarily involved in the matter of issuance of the charge-sheets, or that the concerned authority was so biased that the enquiry would be a mere farcical show, and the final conclusions are well known in advance. In fact, the concerned officer against whom allegations of mala fide had been made has already superannuated on 30.05.2011, and, as on today, if <sup>the</sup> two disciplinary enquiries are completed, it cannot be said that they would be a mere farcical show, and that the conclusions of the two disciplinary enquiries are well known in advance. The Disciplinary Authority, the Appellate Authority, the Reviewing and the Revisional Authorities, wherever such a provision exists, are all expected to perform their



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functions in quasi-judicial manner with due application of mind. Therefore, it cannot be held that the two disciplinary enquiries, if held, now, would be farcical.

20. It is seen that in the case of Union of India & Anr. v. Kunisetty Satyanarayana (supra) cited by the learned counsel for the respondents, the Hon'ble Apex Court has categorically held that writ against charge-sheet or show cause notice is a premature writ, and does not lie. In holding so, the Hon'ble Apex Court has stated as follows:-


  
 "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".

21. The case of Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh and others (supra), related to the maintainability of Writ Petition under Article 226, where the show cause notice against eviction issued to the petitioner was challenged before the Hon'ble Apex Court. The petitioner had disputed the jurisdiction of the Competent Authority on the ground that he was not a tenant of the Housing Board. In that case, the Hon'ble Apex Court had held that the first respondent before the Hon'ble Apex Court/petitioner before the High Court, was



unjustified in invoking the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against the notice issued to him. It had stated in Paragraphs 10 & 11 in the judgment as follows:-

“10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is *ex facie* a "nullity" or totally "without jurisdiction" in the traditional sense of that expression- that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case , for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate, that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

11. Or the facts of this case, we hold that the 1st respondent was unjustified in invoking the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against Annexure Ext. P-4 before the 3rd respondent. The appropriate procedure for the 1st respondent would have been to file his objections and place necessary materials before the 3rd respondent and invite a decision as to whether the proceedings initiated by the 3rd respondent under Section 59 of the Bihar State Housing Board Act. 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case, proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the writ petition and in allowing the same by quashing Annexure Ext. P-4 and also the Eviction proceedings No. 6/92, without proper and fair investigation of the basic facts. We are, therefore,



constrained to set aside the judgment of the High Court of Patna in C.W.J.C. No. 82/93 dated 10-2-1993. We hereby do so. The appeal is allowed with costs".

22. In the case of Special Director v. Mohd. Ghulam Ghouse (supra), the Hon'ble Apex Court was considering the maintainability of Writ Petition when the Show Cause Notice had been issued by the Enforcement Directorate against the respondent before it for large scale financial irregularities, and he had filed a Writ petition before the Hon'ble High Court, seeking quashing of the Show Cause Notice, and had prayed for interim relief restraining the appellant from initiation of Show Cause Notice. Deprecating the High Court for having allowed a challenge to the legality of the Show Cause Notice, and stalling the enquiries, and granting interim relief orders, the Hon'ble Apex Court had held as follows:-

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show causes notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded



to the writ petitioner even at the threshold by the interim protection, granted.

6. In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which has weighed with it in granting such an extra ordinary relief in the form of an interim protection. This admittedly has not been done in the case at hand".

23. It is trite law that mere issuance of charge sheet proposing for conduct of a disciplinary enquiry in itself does not cast any stigma on the concerned Government employee. The stigma is cast only when the Disciplinary Authority proceeds to impose a penalty upon the concerned Government servant, after having considered the report of the Enquiry Officer and the reply of the delinquent Government official, after the enquiry has been held.

24. Bowing down before the wisdom laid down by the Hon'ble Apex Court in the case of Union of India v. Kunisetty Satyanarayana (supra), and the two other cases cited in para 21 and 22 above, I consider that it will be improper for this Tribunal to interfere with the process of conduct of disciplinary enquiry, initiated against the applicant of these two OAs by the department concerned. The Private Respondent/ respondent No.5 has already retired on superannuation, and, therefore, the hint or whiff/smell of mala fide, which could have been perhaps smelt in the impugned Show Cause Notices, no longer survives. Therefore, both the OAs are rejected and the present Disciplinary Authority of the applicant will be at liberty to apply his mind once again, and, if

necessary, either continue with both the proposed disciplinary enquiries, or to withdraw the charge memos issued earlier, and frame them afresh, and conduct a proper disciplinary enquiry against the applicant as per rules, if he arrives at such a conclusion in his quasi-judicial capacity, after re-appreciating all the facts and circumstances of the case.

With these observations, both these OAs are rejected, but there shall be no order as to costs.

**COMPARED &  
CHECKED**

cc.

*Q*  
*Sd*  
**(SUDHIR KUMAR)**  
**Member (A)**

**CERTIFIED TRUE COPY**  
**Dated 16.6.2012**

*G. D. Bhatia*  
गुरुभान बहिलाली (न्याय.)  
Section Officer (Jud.)  
उन्नीसवां प्रशासनिक अधिकारी  
Central Administrative Tribunal  
जोधपुर न्यायपीठ, जोधपुर  
Jodhpur Bench, Jodhpur.

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