

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4093/2016
with
M.A.No.3681/2016

Order Reserved on: 14.12.2016
Order pronounced on 16.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Uday Kumar Varma, Member (A)

1. Sh. Virender Sharma
Group `B'
Presently posted as PAO (DMS), Office of CC
Sh. Rajkumar Sharma
Aged about 48 years
C/o Sh. Santhosh Kumar
R/o 173, Sector 3
Pushp Vihar, New Delhi – 110 017.
2. Sh. Sunil Kumar
Group `B'
Presently posted at New & Renewable Energy,
Office of CCA, CGO Complex
S/o Sh. Ram Prashad Gain
Aged about 44 years
C/o Sh. Santhosh Kumar
R/o 173, Sector-3
Pushp Vihar,
New Delhi – 110 017.
3. Sh. C. Maheshwaran
Group `A'
Presently posted as Controller of Accounts,
Ministry of Power
S/o Sh. R. Chinnusamy

Aged about 43 years
 C/o Sh. Santhosh Kumar
 R/o 173, Sector 3
 Pushp Vihar,
 New Delhi – 110 017. ... Applicants

(By Advocate: Mr. Nilansh Gaur)

Versus

Controller General of Accounts
 Office of Controller General of Accounts
 Mahalekha Niyantarak Bhawan
 Block `E', GPO Complex
 INA, New Delhi – 110 023. ... Respondent

ORDER

By V. Ajay Kumar, Member (J):

Heard the learned counsel for the applicants.

2. The applicants, who are working as PAO (DMS), Assistant Accounts Officer and Controller of Accounts respectively, filed the OA, seeking the following relief(s):

"8.1 Set aside the impugned orders at **Annexure A-1 (Colly.)** and direct the respondent to furnish the applicants documents sought for in their interim response with further extension of thirty days time to file appropriate response to the memoranda dated 24.11.2016; and

8.2 Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case."

They have also filed an MA No.3681/2016, seeking permission to file a single OA.

3. The respondents vide separate Memorandums, all dated 24.11.2016 (Annexure 3 (Colly.)), issued to the applicants while furnishing statement of irregularities/malpractices noticed on the part

of the applicants, called for their explanations within seven days, to show cause why action should not be taken against them.

4. In reply thereto, the applicants vide Annexure A4 (Colly.) separate representations, all dated 25.11.2016, while seeking further time to submit their explanation, sought for furnishing of certain information and documents, stated to be relevant.

5. The respondents vide the impugned Annexure A1 (Colly.) letters, all dated 07.12.2016 while informing that the applicants' request, for providing copies of documents, has not been found possible to accede, as per rules, granted seven days more time to submit the explanations by the applicants to the Annexure 3(Colly.) Memorandums.

6. The applicants filed the OA, seeking to set aside the said impugned orders and for a direction to furnish the documents sought by the applicants, along with the MA, seeking permission to file a single OA.

7. In the circumstances, the M.A., for single OA, is allowed.

8. As per the settled principles of law that Courts/Tribunals would not, ordinarily, entertain OAs/Writ Petitions at the stage of show cause notice or charge memorandum, since the delinquent employees would get an opportunity to defend themselves in the departmental enquiry, in the event that the disciplinary authority does not satisfy with the explanation/representation submitted to the show cause notice/charge

memorandum, by the delinquent employees and proceed to hold inquiry.

9. In **Union of India v. Upendra Singh**, JT 1994 (1) SC 658], the Hon'ble Apex Court held as under:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this court. It would be sufficient to quote the decision in **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons**. The bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus :

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

10. In **Union of India & Others v. Kunisetty Satyanarayana**, (2006) 12 SCC 28, the Hon'ble Apex Court held 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 Ghouse 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.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

11. A Show Cause Notice/Charge Sheet is normally not to be quashed unless prejudice is shown to be caused to the delinquent officer or the same is issued by an incompetent authority. (See **State of U.P. v. Brahm Dutt Sharma**-AIR 1987 SC 943; **Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh**-(1996) 1 SCC 327; **Ulagappa & Others v. Divisional Commissioner, Mysore**-AIR 2000 SC 3603; **Special Director & Another v. Mohd. Ghulam G. House**-AIR 2004 SC 1467; **Secretary, Ministry of Defence v. Prabhash Chandra Mirdha**-AIR 2012 SC 2250).

12. The respondents by issuing the Memorandums dated 24.11.2016 are seeking to assess and ascertain the facts relating to the certain alleged omissions and commissions of the applicants.

13. At this stage, the respondents have neither issued any Charge Memorandum under the provisions of the CCS (CCA) Rules, 1965 nor initiated any departmental inquiry against the applicants. The impugned order is of the nature of an administrative directions and not a document issued under any statutory rule. The respondents are still at the fact finding stage.

14. The applicant also failed to show any special circumstances or grounds which warrant the interference of this Tribunal at the present stage of Show Cause Notice.

15. In the circumstances and in view of the aforesaid settled principles of law, the OA is dismissed as premature. No costs.

(Uday Kumar Varma)
Member (A)

(V. Ajay Kumar)
Member (J)

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