

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
(THROUGH VIRTUAL HEARING)

5.

OA 1064/2021

Col Anshuman Vivek Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. S.R. Swain, Advocate
Lt Col Monal Pashene, OIC, Legal Cell

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
01.07.2021

OA 1064/2021

This OA has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following reliefs:

- (i) To call for the records of the case and peruse the same; and
- (ii) To declare the action of the respondents as illegal, unjust and illegal; and
- (iii) To quash and set aside SCN dated 07 Apr 2021; and
- (iv) To direct the respondents to investigate fairly the complaint dated 13 Feb 2019 made by the applicant and thereafter take action against the actual offender."

2. Factual matrix of the case, in brief, is that the applicant was commissioned in the Indian Army in June 1999 as Permanent Commissioned Officer and is presently working in the rank of Col. Respondent No.5, belonging to JAG Branch,

was utilizing the services at Delhi of one L/Nk of applicant's unit on the basis of request made by him to the predecessor of the applicant. After lot of efforts put in by the applicant, respondent No.5 returned the L/Nk to the unit of the applicant. Because of this respondent No.5 got annoyed with the applicant and threatened him with dire consequences. On the basis of e-media report a Court of Inquiry, at the behest of respondent No.5, was ordered to investigate the veracity of allegations leveled against the applicant in relation to an incidence of suicide committed by the wife of 2IC of the unit of the applicant. Three Court of Inquiries conducted earlier into the matter found no shred of allegation against the applicant. The applicant filed a complaint requesting that respondent No.5 should not be allowed to tender any legal opinion in the COI relating to him. After the COI submitted its report finding the applicant blameworthy, vide order dated 28th October, 2019; the applicant was attached to HQ 11 Inf Div on the pretext of disciplinary action. A Writ Petition filed by the applicant challenging the attachment order was dismissed by the Hon'ble Delhi High Court on 27th May, 2021 on the ground that the jurisdiction to adjudicate the issue lies with this Tribunal. On 7th April, 2021, the applicant was issued a show cause notice, impugned herein, calling upon him to submit his defence as to why his services should not be terminated. Hence this OA.

3. On advance notice, Mr. S.R. Swain, learned counsel for the respondents, has appeared and has taken a preliminary objection about the maintainability of the OA on the ground that multiple prayers have been made by the applicant in the OA which are not maintainable. Further more as far as show cause notice dated 7th April, 2021 is concerned, the OA is pre-mature. Reliance has been placed on the judgments in Chanan Singh Vs. Registrar, Co-op Societies, Punjab and Ors. [(1976) 3 SCC, 361]; Secretary, Ministry of Defence and Ors. Vs. Prabhash Chandra Mirdha [(2012) 11 SCC 565] and Lt Col (MNS) Madhu Lata Gaur Vs. Union of India and Ors. [2015 SCC On Line AFT 689].

4. As regards the other prayer made by the applicant regarding his complaint dated 13th February, 2019, it is submitted by learned counsel for the respondents that the same has already been investigated and the complaint has been closed as per letter dated 26th December, 2019, a copy of which has been placed on record. Therefore, it is submitted that as regards this relief, the OA has become infructuous.

5. Rebutting the submissions of learned counsel for the respondents, learned counsel for the applicant submitted that the show cause notice is liable to be set aside for the reasons detailed in the OA. As regards the order dated 26th December, 2019, it is submitted that the copy of the same has not been supplied either to the applicant or to him and

in fact the same is pre-dated as a writ petition was filed by the applicant before the Hon'ble Delhi High Court which was disposed of on 27th May, 2021 and if this order had been in existence, the same would have been brought to the notice of Hon'ble High Court.

6. Having considered the rival contentions of learned counsel for the parties, first of all it will be relevant to consider the preliminary objection taken by learned counsel for the respondents regarding the maintainability of the OA being premature.

7. In *Chanan Singh* (supra) challenge was made to the show cause notice issued to the appellant and an objection was taken that the writ petition was pre-mature since no action had been taken finally against the appellant, the disciplinary proceedings are still pending, it is only in the event of the appellant being punished that any grievance can arise for him to be agitated in the appropriate forum, the Hon'ble Supreme Court observed as under:

"5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to of the appellant were invalid, issued a fresh memorandum which concluded the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration."

8. Similar issue cropped up before the Hon'ble Supreme Court in *Prabhash Chandra Mirdha* (supra) and it will be relevant to reproduce the observations made in para 10 of the judgment:

“ Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. “

9. This very judgment was relied upon by the Armed Forces Tribunal, Regional Bench, Lucknow in the case of *Madhu Lata Gaur* (supra) where also the challenge was to the show cause notice. After referring to various judgments passed by the Hon'ble Apex Court, it was held as under:

“7. In view of the case laws cited above, when a Show Cause Notice is issued to a Govt. Servant, ordinarily he must place his case, necessary material and also raising objection, if any, regarding want of jurisdiction before the authority concerned. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. Servant and once cause is show, it is open to the authority concerned to consider the matter in the light of the facts and submissions placed by the Govt. Servant and only thereafter a final decision in the matter could be taken. In the case in hand, admittedly, the Applicant has not exhausted alternate remedy available to her and also no final order has been passed by the Respondents on Show Cause Notice. It is well settled preposition of law that petition lies when some right of any party is infringed. Mere Show Cause Notice does not give rise to any cause of action nor did it infringe the right of any person. Also it does not amount to any adverse order which affects the rights of another party, unless the same has been issued by a person having no jurisdiction to do so. At this stage, in reply to impugned Show Cause Notice, it would be appropriate for the Applicant to file her objections and place necessary material before the authority concerned. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, it may have grievance and cause of action.

8. In the light of the case law discussed above and looking into the facts and circumstances of the case, we are of the considered opinion that since in the instant case only Show Cause Notice has been issued and the Original Application has been

filed only to quash the said Show Cause notice, the Original Application being premature, deserves to be dismissed as such."

10. In the light of the case law discussed above, since in the instant case only a show cause notice has been issued to the applicant thereby affording him an opportunity of hearing by the Competent Authority, therefore, it will be open to the applicant to take all relevant pleas while filing reply to the show cause notice. That being so, there is substantial force in the submissions of learned counsel for the respondents that the OA is pre-mature.

11. Learned counsel for the applicant then submitted that in case the Tribunal is not willing to entertain the OA being premature, then ten days' time may be granted to the applicant to file reply to the show cause notice. Further direction be also given to decide the same in a time bound manner. Moreover, in case any adverse order is passed against the applicant, same be not given effect to for a period of seven days. This was objected to by Lt Col Monal Pashene, OIC, Legal Cell on the ground that the show cause notice was issued way back on 7th April, 2021 and more than sufficient time was available with the applicant to file reply to the show cause notice. However, same was not done, therefore, there is no ground for granting further time to file reply to the show cause notice.

12. Although, it is true that the show cause notice is dated 7th April, 2021 and the applicant was granted thirty days time to file reply to the show cause notice. Even the writ

petition filed by him was dismissed by the Hon'ble High Court way back on 27th May, 2021, but till date the reply has not been filed by him. However, in the interest of justice and in order to afford an opportunity to the applicant to ventilate his grievances, he is granted ten days time from today to file reply to the show cause notice. Needless to say the same will be considered by the Competent Authority and the decision taken thereon shall be communicated to the applicant. In case the applicant is dis-satisfied with the decision, he will be at liberty to take legal recourse.

13. As regards the second prayer directing the respondents to investigate the complaint dated 13th February, 2019 made by the applicant is concerned, since the same has already been decided by the respondents as per letter dated 26th December, 2019, copy of which be supplied to counsel for the applicant. This prayer has become infructuous.

13A. With these observations the OA stands dismissed.

DASTI.

[REDACTED]
(SUNITA GUPTA)
MEMBER (J)

[REDACTED]
(P.M. HARIZ)
MEMBER (A)

/vks/