RESERVED

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ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

COURT NO. 2

Original Application No. 66 of 2015

Wednesday, the 22nd day of April, 2015

"Hon'ble Mr. Justice Virendra Kumar DIXIT, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)"

IC – 58559H, Lt. Col. Anil Kumar Singh Rathore (SM) aged about 42 years, S/o Hony. Capt. Prithavi Raj Singh, presently posted with 502, ASC Battalion, C/o 99 APO

…….**Applicant**

Versus

1. Union of India, Ministry of Defence, South Block, New Delhi-110011.

2. The Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.

3. General Officer Commanding – in – Chief, Central Command, Lucknow-226002.

4. Commanding Officer, Supply Depot, ASC, Battalion, C/o 56 APO

….**Respondents**

Ld. Counsel for the Applicant	-	Shri P.N. Chaturvedi, Advocate
Ld. Counsel for the Respondents	-	Shri Mukund Tewari, Sr. Standing Counsel. Shri D.S. Tiwari, Central Government Counsel

ORDER

1. This Original Application has been filed by Ld. Counsel for the Applicant under Section 14 of the Armed Forces Tribunal Act 2007, whereby the Applicant has sought following reliefs:-

> *(a) Issue/pass an order or direction of appropriate nature to the respondents to cancel/quash the Show Cause Notice dated 8.12.2014* ***[Annexure No.A-1(i)]*** *served by GOC – in – C, Central Command Lucknow, being per se illegal and suffering for want of jurisdiction.*
>
> *(b) Issue/pass an order to grant him all service and monetary consequences and also compensation for resorting to a per se illegal and without jurisdiction exercise which has resulted in acute harassment, gross agony and bring down applicant's reputation in the esteem of his colleagues and near and dear ones.*
>
> *(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
>
> *(d) Allow this application with costs.*

2. The factual matrix of the case is that the Applicant was posted at Supply Depot, Bareilly as Depot Supervising Officer from 15.05.2010 to 12.03.2012. During tenure of his duty certain irregularities were noticed and a Court of Inquiry was convened by Headquarter Uttar Bharat Area to enquire into/investigate and collect evidence with regard to irregularities as noticed by the Board of Officers at supply Depot Bareilly and Remount Training School and Depot, Hempur. The General Officer Commanding-in-Chief found the applicant blameworthy for following lapses.

(a) *Cleared documents for payment to the contractor even before the loads were received at Remount Training School and Depot, Hempur contrary to guidance provided in the Standard Operating Procedure.*

(b) Failed in supervision over the activities of staff under you as Depot Stock Officer, which led to falsification of documents.

(c) Failed to follow procedures as per Standard Operating Procedure in respect of despatch and monitoring receipt of stores at Remount Training School and Depot, Hempur.

3. A Show Cause Notice was issued by the General Officer Commanding–in-Chief to show cause as to why censure in

appropriate form not be conveyed to the Applicant for the above mentioned lapses. Being aggrieved the Applicant filed this O.A.

4. Ld. Counsel for the Respondents has raised preliminary objection about the maintainability of the O.A. on the ground that till date only Show Cause Notice has been issued.

5. Before entering into the merits of the case, we have to consider whether the Original Application is premature as the Applicant has filed the instant Original Application challenging the impugned Show Cause Notice.

6. Heard Ld. Counsels for the parties on maintainability of Original Application questioning legality of the Show Cause Notice.

7. Ld. Counsel for the Applicant submitted that the issue of Show Cause Notice suffers not only from gross legal infirmities but also from want of jurisdiction. He submitted that it is the established position of law as held by Hon'ble The Supreme Court in the case of Chief of the Army Staff and others Vs Major Dharam Pal Kukrety reported in (1985) 2 SCC 412 and also in Union of India Vs A.D. Nargolkar reported in 2014 (3) SCT 630, that the Tribunal can be approached before reply of the Show

Cause Notice and the Show Cause Notice can be impugned without replying the same. The only rider is that the applicant/petitioner will have to bring forth that the impugned Show Cause Notice suffers from the want of jurisdiction. This aspect has been comprehensively dealt and decided by Hon'ble The Supreme Court in the above mentioned cases. The *ratio decendi* of these judgments are that the Applicant will have to show prima facie about the aspects of illegality and want of jurisdiction to serve the Show Cause Notice. The Show Cause Notice dated 18.12.2014 issued to the Applicant suffers from the want of jurisdiction as well as several legal infirmities. He further submits that the court of Inquiry proceedings cannot be used as basis of impugned Show Cause Notice.

8. In support of his arguments Ld. Counsel for the Applicant has cited Rule 182 of Army Rule and the law laid down by Hon'ble The Apex Court in the cases of **Chief of the Army Staff and others Vs Major Dharam Pal Kukrety** reported in (1985) 2 SCC 412 and **Union of India Vs A.D. Nargolkar** reported in 2014 (3) SCT 630.

9. On the other hand Ld. Counsel for the respondent submitted that the instant Original Application is premature as

the Applicant has filed the instant O.A. challenging a mere Show Cause Notice and no cause of action arose and no final order has been passed against the Applicant. It is further submitted that Hon'ble The Apex Court in a catena of judgments has time and again held that a petition should not be entertained against a mere Show Cause Notice or a charge sheet for the reason that it does not give rise to any cause of action, as it does not amount to any adverse order, which affects the right of any party and hence the petition filed at this stage challenging the Show Cause Notice would be premature. In view of the settled position of Law held by various judgments of Hon'ble The Apex Court, the instant Original Application is not maintainable as being premature.

10. Ld. Counsel for the Respondents has also submitted that the fact of the case of **Major Dharam Pal Kukreti** (**supra**) and **A.D. Nargolkar (supra)**, are different and therefore, the case law of the aforesaid cases cited by the Learned Counsel for the Applicant is not applicable in the present case.

11. In support of his argument, Ld. Counsel for the Respondents has cited the law laid down by Hon'ble The Apex Court in the cases of:–

(i) **State of Uttar Pradesh Vs Shri Brahm Datt Sharma and another,** reported in **AIR 1987 SC 943.**

(ii) **Special Director and Another Vs Mohd. Ghulam Ghouse and Another,** reported in (2004) 3 SCC, 440.

(iii) **Union of India and Another Vs Kunisetty Satyanarayana** reported in **(2006) 12 SCC 28.**

(iv) **Secretary Ministry of Defence and Others Vs Prabhash Chandra Mirdha** reported in (2012) 11 SCC 565.

12. We have considered the arguments advanced by Ld. Counsel for the parties and material available on record. In the instant case we have to adjudicate whether the case is maintainable or not on the ground that till date only Show Cause Notice has been issued.

13. For ready reference Rule 182 of Army Rule 1954 is reproduced as under:-

> "***182 – Proceedings of Court of inquiry not admissible in evidence –*** *The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against*

a person subject to the act, nor shall any evidence respecting the proceedings of the court be given any such person except upon the trial of such person for willfully giving false evidence before the court:

***Provided** that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross examining any witness."*

14. In the case of **Chief of Army Staff and Others Vs Major Dharam Pal Kukrety** (**Supra**), in Para 5 of the judgment. Hon'ble The Apex Court has observed as under:-

"5. The same contentions, as were raised before the High court, were taken before us at the hearing of this appeal. We will first deal with the appellants' preliminary objection that the respondent's writ petition was not maintainable as being premature. It was the respondent's case that the Chief of the Army staff had no jurisdiction to issue the impugned show cause notice after he had been again found not guilty by the Court-martial on revision. The said notice expressly stated that the Chief of the Army Staff was of the opinion

that the respondent's misconduct as disclosed in the proceedings rendered his further retention in service undesirable and asked him to submit his explanation and defence, if any, to the charges made against him. If the respondent's contention with respect to the jurisdiction of the Chief of the Army Staff to issue the said notice were correct, the respondent was certainly exposed to the jeopardy of having his explanation and defence rejected and he being removed or dismissed from services. Were the said notice issued without jurisdiction, the respondent would have then suffered a grave, prejudicial injury by an act which was without jurisdiction. Where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the court's protection. If, on the other hand, the Chief of the Army staff had the power in law to issue the said notice, it would not be open to the respondent to

approach the court under Article 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature. This was, however, not a contention which could have been decided at the threshold until the court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having held that the impugned notice was issued without any jurisdiction the High Court was right in further holding that the respondent's writ petition was not premature and was maintainable.

15. In the case of **Union of India Vs Major A.D. Nargolkar** (**Supra**), in Para 24, of the judgment, Hon'ble The Apex Court has observed as under:-

(24) Rule 182 provides that the proceedings of a CoI or any statement given at a CoI shall not be admissible in evidence against the person subject to the Act. However, the issue of effect or applicability of the aforesaid

provision has neither been agitated nor been considered by the High Court or the Tribunal.

16. In the case of **State of Uttar Pradesh Vs Shri Brahm Datt Sharma and another,** (**Supra**), in Para 9 of the judgment, Hon'ble The Apex Court has observed as under :-

> "9. *The High Court was not justified in quashing the Show Cause Notice. When a Show Cause Notice is issued to a Govt. servant under Statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing Show Cause Notice is to afford opportunity of hearing to the Govt. servant and once cause is shown, it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision is in the matter could be taken. Interference by the Court before that stage would be premature. The High court in our opinion ought not to have interfered with the Show Cause Notice".*

17. In the case of **Special Director and another Vs Mohd. Ghulam Ghouse and Another** (Supra), in Para 5 of the judgment. Hon'ble the Apex Court observed as under :-

"5. This court in a large number of cases has deprecated the practice or the High Court's entertaining writ petitions questioning legalities of Show Cause 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 the 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 stand highlighted in the writ petition. Whether the Show Cause Notice was founded on any legal premises, is a jurisdictional issue which can even 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 not accorded to the writ petitioner even at the threshold by the interim protection not granted.

18. In the case of **Union of India and Another Vs Kunisetty Satyanarayana (Supra),** in Para 13 and 14 of the judgment. Hon'ble The Apex Court has observed 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 v Ramesh Kumar Singh, Special Director v Mohd. Ghulam Ghouse, Ulagappa v Divisional Commissioner, Mysore, State of UP v Brahm Dutt Sharma, etc.*"

14. The reason why ordinarily a writ petition should 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 right of any party unless the same has been issued by a person have 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 the charges are not established. It is well settled that a writ petition lies when some right of any part is infringed. A mere Show Cause Notice or charge sheet does not infringe the right of anyone. 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."

19. In the case of **Secretary Ministry of Defence and Others Vs Prabhash Chandra Mirdha** (**Supra),** in para 10 of judgment. Hon'ble The Apex Court has observed as under:-

"10. Ordinarily a writ application does not lie against a charge sheet or a Show cause Notice for the reason that it does not give rise to any cause of action or 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 in infringed. In fact charge sheet does not infringe the right of a party, it is only when a final 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 (Vide State of UP v Brahm Dutt Sharma, Bihar State Housing Board v Mohd. Ghulam Ghouse and Union of India v Kunissetty Satyanarayana.

20. In the case of **Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others (Supra)**, in Para 10 and 11 of the judgement. Hon'ble The Apex Court has observed as under :-

"*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 fact of it and without anything more, is totally unauthorized. In such a case for entertaining a writ petition under Art. 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. On the facts of this case, we hold that the first respondent was unjustified in invoking the extraordinary jurisdiction of the High Court

under Article 226 of the Constitution of India, without first showing cause against Annexure Ext. P-4 before the third respondent. The appropriate procedure for the first respondent would have been to file his objections and place necessary materials before the third respondent and invite a decision as to whether the proceedings initiated by the third 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 of 1992, 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 CWJC No. 82 of 1993 dated 10.2.1993. We hereby do so. The appeal is allowed with costs.

21. The facts of the case of **Chief of Army Staff and Others Vs Major Dharam Pal Kukrety** (**Supra**) and the case of

Union of India Vs A. D. Nargolkar (Supra) are different. In the case of **Major Dharam Pal Kukrety** (**Supra)** the impugned Show Cause Notice was issued by Chief of the Army Staff after petitioner had been found not guilty on trial by the Court Martial on revision and in the case of **A.D. Nargolkar (Supra),** Hon'ble The Apex Court has observed that Rule 182 provides that the proceedings of a CoI or any statement given at a CoI shall not be admissible in evidence against the person subject to the Act, whereas in the instant case the Show Cause Notice is issued to the Applicant as an opportunity to place his submission and necessary material before the authority concerned to prove his innocence against lapses/irregularities for further process of passing an appropriate final order. In view of the above the case law cited by the Ld. Counsel for Applicant of the aforesaid cases is not applicable in the instant case.

22. In view of the case laws cited above, when a Show Cause Notice is issued to a Government Servant, ordinarily he must place his case, necessary material and also raise objection, if any, regarding want of jurisdiction before the authority concerned. The purpose of issuing Show Cause Notice is shown, it is open to the authority concerned to consider the matter in the light of the facts and submissions placed by the

Government 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 him 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 does it infringe the right of any person. Also it does not amount to an 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 should be appropriate for the Applicant to file his 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.

23. Hon'ble the Apex Court in a catena of judgments time and again held that petition should not be entertained against a mere Show Cause Notice or a charge sheet for the reason that it does not give rise to any cause of action which affect the right of any party, hence the petition filed at this stage challenging the Show Cause Notice would be premature and therefore,

interference by the Court before final decision in the matter would be premature. Even to entertain 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 enquiry in question. It will certainly be opened to the Applicant to assail the same either in appeal or revision.

24. In light of the case law discussed above and looking into the facts and circumstances of the case, we are of the considered view that the Original Application is premature as the Applicant has filed the instant Original Application challenging a mere Show Cause Notice. Only Show Cause Notice does not give rise to any cause of action also no final order has been passed against the Applicant, as such **Original Application is not maintainable being premature**.

25. Thus in the result, without entering into merits of the case, the Original Application being premature is **dismissed** as such.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Date : April 2015