

**RESERVED ORDER****' A.F.R'**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**COURT NO 2****OA 274/2014 with MA 1802/2014****Thursday, this the 16th of Feb 2015****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**NR-20124W, Lt. Col. (MNS) Madhu Lata Gaur of Army Hospital  
(Research and Referral) Delhi Cantt.

- Applicant

Versus

1. Union of India, through Ministry of Defence, South Block, New Delhi-110011
2. Chief of the Army Staff, Integrated Head Quarters, Ministry of Defence (Army), South Block, New Delhi-110011
3. General Officer Commanding-in-Chief, HQ Western Command, Chandigarh.
4. Additional Directorate General Discipline and Vigilance, Adjutant General’s Branch IHQ of MOD (Army) Sena Bhawan, New Delhi-110011.
5. Commandant, Army Hospital, Research and Referral, Delhi Cantonment.

....Respondents

**Ld. Counsel appeared for the Applicant - Shri P. N. Chaturvedi,  
Advocate****Ld. Counsel appeared for the respondents - Shri Ashutosh Kumar Srivastava  
Central Government Counsel**

**ORDER**

**“Hon’ble Mr. Justice Virendra Kumar Dixit, Judicial Member”**

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 30.09.2014, the reply of which has been sought by 27.12.2014.*

*(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.*

*(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

2. The factual matrix of the case in brief is that Captain Renu Singh; a Military Nursing Service Officer has leveled allegations against the Applicant that she has shown her husband Naik/Pharma Kishore Kumar of 356 Field Hospital as Applicant’s husband in all her service documents by publishing Daily Order Part II. She alleged that the Applicant has not only published her husband’s name as Applicant’s husband but also availed Transfer Grant on her husband’s name. A Court of Inquiry was held on 20 October 2011 and subsequent days to inquire into the allegations levelled by Captain Renu Singh and the Applicant was found blameworthy. A Show Cause Notice dated 30 Sep 2014 was issued by Additional Directorate General, Discipline and

Vigilance, Adjutant General's Branch, Integrated HQ of MOD (Army), New Delhi, to the Applicant to show cause within 30 days of receipt of the Show Cause Notice, as to why the Applicant's services should not be terminated by way of dismissal under the provisions of Section 7 of Indian Military Nursing Services Ordinance, 1943. Being aggrieved, the Applicant who is posted in Army Hospital (Research and Referral), Delhi Cantonment, filed this Original Application.

3. 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.

4. 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.

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

6. Hon'ble The Apex Court in a catena of judgements 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 this context, we have gone through some

of the following judgements of Hon'ble The Apex Court, the relevant paras of which are as under :-

(a) In the case of **State of Uttar Pradesh Vs. Shri Brahm Datt Sharma and another**, reported in **AIR 1987 SC 943**, at para 9, Hon'ble The Apex Court has observed :-

*“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 a 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 Govt. servant and only thereafter a final decision 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.”*

(b) In the case of **Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others** reported in **(1996) 1 SCC 327**, at para 10 and 11, Hon'ble The Apex Court has observed :-

*“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 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. 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 judgement 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.*

(c) In the case of **Special Director and Another Vs. Mohd. Ghulam Ghouse and Another** reported in **(2004) 3 SCC 440**, at para 5, Hon'ble The Apex Court has observed :-

*"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 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 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 not accorded to the writ petitioner even at the threshold by the interim protection not granted.*

(d) In the case of **Union of India and another Vs Kunisetty Satyanarayana** reported in **(2006) 12 SCC 28**, at para 13 and 14, Hon'ble The Apex Court has observed :-

*“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 Commr., Mysore, State of U.P. v. Brahm Dutt Sharma, 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 shown 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 petition lies when some right of any party 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.”*

(e) In the case of **Secretary Ministry of Defence and others Vs. Prabhash Chandra Mirdha** reported in **(2012) 11 SCC 565**, at para 10, Hon'ble The Apex Court has observed :-

*“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. 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. (Vide State of U.P. v. Brahm Dutt Sharma, Bihar State Housing Board v. Ramesh Kumar Singh, Ulagappa v. Commr., Special Director v. Mohd. Ghulam Ghouse and Union of India v. Kunissetty Satyanarayana).*

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 shown, 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 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 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 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.

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

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

**(Justice Virendra Kumar Dixit)**  
**Judicial Member**

**Date : .02. 2015**

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