

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT KARACHI
Constitution Petition No. D-2415 of 2022
(Imran Ahmed Alvi Vs. Trustee of the Port of Karachi & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

Before:
Muhammad Karim Khan Agha, J;
Adnan-ul-Karim Memon, J

Date of hearing and order 13-08-2024

Mr. Muhammad Nishat Warsi, advocate for the petitioner.
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon J:- The petitioner is asking this court for the following relief:

- Declare the show-cause notice illegal by finding that the threats it contains are unconstitutional and violate the rules of the respondent department.
- Invalidate the show-cause notice because it was issued maliciously, without any evidence against the petitioner, and is not legally sound.
- Recognize discrimination against the petitioner by declaring that he was unfairly appointed to a BPS-16 position when the post of Assistant Manager (HR) was BPS-17.
- Order the respondents to grant the petitioner BPS-17 status from his initial appointment date and provide all related benefits.
- Direct the respondents to consider the petitioner for promotion to Manager (BPS-19), noting his previous experience in that role.
- Order the restoration of the petitioner's accommodation.
- Issue a restraining order to prevent the respondents from taking any negative action against the petitioner, such as a transfer, based on the show-cause notice.

2. In 2004, the petitioner was hired as an Assistant Manager (HR) for the Karachi Port Trust, but was incorrectly placed in BPS-16, even though the post was scheduled as BPS-17. Despite multiple requests and an internal recommendation to correct this discrepancy, his promotion to BPS-17 was delayed until 2009. He was later promoted to Deputy Manager (BPS-18) in 2012 and frequently served as acting Manager for various departments, but the initial pay grade issue was never resolved.

3. The petitioner's counsel claims that the petitioner was unfairly served a charge sheet and a subsequent show-cause notice by Karachi Port Trust (KPT). The petitioner's counsel claims the charges are malicious and based on a misunderstanding of his degrees. He says that the petitioner did submit an application for approval of his higher education, which should be considered an NOC. The internal inquiry committee largely cleared him, finding that two of the three charges were not proven. For the third charge (not obtaining an NOC), the committee recommended a minor warning, not a major penalty. The petitioner's counsel alleges that despite the inquiry report, the KPT management issued a show-cause notice threatening a major penalty, which is illegal without a note of dissent from the inquiry report. He believes this entire process is a vendetta to block his promotion to accommodate a rival officer who has pending NAB cases. He further submitted that despite the committee's report, which was largely favorable to the petitioner, a show-cause notice was issued referencing rules that could lead to a major penalty. The petitioner maintains he never submitted any fraudulent degrees. Based on these points, the counsel is asking this court to quash the show-cause notice and declare his right to promotion. He prayed for allowing the petition.

4. KPT denies all allegations, stating the petitioner was properly charged for misconduct, including unauthorized absence and submitting incorrect information about his degrees. Learned AAG argues the petitioner's reply to the charge sheet and show-cause notice was unsatisfactory. However, KPT maintains that the inquiry committee proved one of the charges, failing to obtain an NOC for his MBA degree, and that the petitioner used this degree to gain an "undue advantage" for promotion. She claims that the petitioner is trying to dictate the penalty to the competent authority and that the show-cause notice was issued after following all legal procedures. KPT also raises preliminary legal objections, including that the petition is not maintainable, lacks a proper cause of action, and may be dismissed with costs. She also asserts that the petitioner failed to serve a mandatory notice under Section 87 of the KPT Act of 1886.

5. We have heard learned counsel for the parties present in court and have perused the material available on record with their assistance.

6. The Supreme Court has repeatedly disapproved the practice of filing a Constitutional Petition under Article 199, bypassing the proper legal channels like appeals to competent authorities after culmination of the disciplinary proceedings. This approach undermines legal proceedings and is not permissible, especially when a show-cause notice has been issued, which is not the final decision.

7. In view of hereinabove facts and circumstances of the case, we do not find any substance in the aforesaid response submitted by the learned counsel for the petitioner.

8. We are of the considered view that instant petition is misconceived and not maintainable for having been filed on mere issuance of Show Cause Notice, which *prima facie* does not suffer from any jurisdictional defect or patent illegality, whereas, the objections raised by the petitioner through instant petition can be agitated before the statutory forums while submitting the response/reply to the impugned Show Cause Notice in accordance with law. Accordingly, the instant petition is dismissed.

JUDGE

HEAD OF COST. BENCHES

Shafi