

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 8282 of 2018

Ghulam Sarwar Qureshi.....Petitioner

V/s

Federation of Pakistan & others.....Respondents

Date of hearing: 29.11.2018

Mr. Irfan Yaqoob Arfani, advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner has challenged the show cause notice dated 13.11.2018 issued by the Respondent-Pakistan Steel, whereby the Inquiry Officer found him guilty of the charges as contained in the charge-sheet, amounting to misconduct on his part, under disciplinary rules. Petitioner has submitted that the aforesaid domestic inquiry cannot be initiated against him, in view of the inquiry initiated by Federal Investigation Agency (FIA) into the affairs of Township Department of Pakistan Steel for the period from 01.01.2016 to 31.12.2016.

2. Mr. Irfan Yaqoob Arfani, learned counsel for the Petitioner has argued that the Petitioner is serving as Junior Officer Carpentry Shop Civil Maintenance Department, Pakistan Steel and prior to that he was posted as Incharge (Residential) Estate Section, Township Branch Pakistan Steel. He next submitted that the Federal Investigation Agency (FIA) conducted the investigation with regard to certain matters of Township Department and in the meanwhile, Respondent-Pakistan Steel also started conducting

domestic inquiry against the Petitioner vide letter dated 22nd February, 2018 which is against the law. Learned counsel next argued that the Petitioner is a victim of double jeopardy as independent inquiry is being conducted by FIA, which is in process; therefore, he cannot be vexed twice for the same allegations, which are violative of the Article 13 of the Constitution of Islamic Republic of Pakistan, 1973. He next added that the Petitioner was wrongly declared guilty in the aforesaid domestic inquiry by the Inquiry Officer, without providing an opportunity of fair trial to record his evidence. He further argued that the Petitioner had already submitted his statement in the inquiry proceedings before the FIA which has direct nexus with the domestic inquiry conducted by Respondent-Pakistan Steel. He further added that all the disciplinary proceedings initiated against the Petitioner, culminated into final show cause notice, whereby major penalty of dismissal from service has been suggested against the Petitioner, which act of the Respondents is illegal and without lawful authority. He prays for notice.

3. A query was raised by this Court as to how the instant Petition is maintainable against the final show cause notice, since no final decision has been taken against the Petitioner in the disciplinary proceedings. Learned counsel in reply to the query has submitted that there are series of decisions of this Court on the issue of maintainability of Constitutional Petition against show cause notice or an order, where statutory remedy is available. He further added that since the Petitioner is facing two enquiries, one by FIA and second by Respondent-Pakistan Steel, which is hit by Article-13 of the Constitution that nobody could be vexed twice for the same allegations. He reiterated his earlier submissions and argued that this is a case of hardship.

4. We have heard learned counsel for the Petitioner and perused the material available on record. It may be stated that in view of the urgency shown by the learned counsel for the Petitioner, he has argued the entire case on merits today.

5. Before dilating upon the above, at the first instance we would like to consider whether Petitioner can challenge his show cause notice and subsequent initiation of inquiry proceedings pending against him in a Constitution Petition.

6. Let us shed light on the word "Show cause notice", which means an order issued by the Competent Authority or an Organization asking an individual or a group of people to explain or to "show cause" in writing as to why the disciplinary action should not be taken against the individual or the group of people involved in certain incidents, misconduct, poor performance and wrongdoing. Order to show cause is issued by the authority or the Management after reviewing the entire incident and if finds that the person accused or may involve in wrongdoing and it is also to give a fair chance of hearing him and his explanation towards his/her actions and so avoid disciplinary action. An order to show cause can be used by employers if there are legitimate grounds to dismiss an employee.

7. In the present proceedings, the Petitioner has called in question the show cause notice dated 13.11.2018 issued by the Respondent-Pakistan Steel. The Inquiry report dated 23rd October, 2018, prima-facie, exposes the conduct of the Petitioner, while he was posted in Township Department of Pakistan Steel, the findings of the inquiry officer is reproduced as under:-

"11. With regard to both charges, viz-a-viz are as follows:

12. Regarding Charge-i

- a) Involvement in the financial misappropriation has been proved in connivance with the HBL (Steel Town) officials, as an amount of Rs.200,000/- was deposited in the HBL (Steel Township Branch) A/C No.175-00039863-01 in account No.1757-79004759-01 of his wife (Naila Bukhari) on 26.12.2016.
- b) Earlier, in the beginning of enquiry, the accused refused to accept the charge but contrary, in his own written statement dated 09.07.2018 (comprising 5 pages), he has accepted the transaction of Rs.200,000/- in his wife account.
- c) As verified / confirmed by the concerned Bank's Manager (Operation) vide his letter No.1757/ES/002 dated 21.02.2018, Rs.11,76,377/- on 22.01.2018. This is an evidence that not only the amount as highlighted in his Charge Sheet dated 01.02.2018 (i.e. Rs.200,000/- in his self account & Rs.200,000/- in his wife's account) were transferred in their private bank accounts, and returned on 22.01.2018, but in addition, amount transmitted in two other accounts i.e. Rs.274,033/- in the account of Mr. Mohsin Ali Channa and Rs.502,314/- in the account of Mr. Saleem Ahmed Jagrani (in 2 installments) has also been returned by the accuse.

13. Regarding Charge-ii

It was the responsibility of Mr. Ghulam Sarwar Qureshi, Jr. Officer (the then responsible officer of Residential Estate Section of Township Department) to deposit cash of residential recovery (Rental Income) in the main account of Pakistan Steel as per assigned task of residential recovery (Rental Income) amounting to Rs.756,871/-. He cannot be exculpated from the charge of non-deposit of cash of residential recovery (rental income) for the period from January-2016 to June-2016 being his responsibility as assigned by the management (Refer "Charter of Duties" letter No.I/C Estate (TS)/2008/2213 dated 16.09.2008).

CONCLUSION

14. Taking into consideration the above stated facts, questions/answers of both sessions, extremely non-cooperative attitude of the accused, non-compliance of the procedural advises of EO, escape of the accused from the mid of the proceedings at his own will and keeping in view the provided enclosures in detail, Mr. Ghulam Sarwar Qureshi, Jr. Officer (P.No.332437) presently working in Civil Maintenance Department, is found "guilty" of the charges leveled against him vide referred Charge Sheet dated 01.02.2018.

8. We have noticed that the Inquiry Officer has opined against the Petitioner and found him guilty of the charges leveled against him vide charge-sheet dated 01.02.2018. In view of such state of affairs, the Petitioner cannot call in question the domestic inquiry

conducted against him, whereby he has been found involved in misappropriation of public funds.

9. In the light of foregoing factual position of the case, it appears that the Petitioner has misconstrued the things and approached this Court for the aforesaid relief which in our view could hardly be granted in a Constitutional Jurisdiction of this Court under Article 199 of the Constitution for the simple reason that the Petitioner is still facing the disciplinary proceedings initiated against him and date and time for personal hearing of the Petitioner is required to be set by the competent authority, therefore, at this juncture, we would not like to dilate upon the aforesaid matter, for the reasons alluded herein above.

10. The Petitioner is admittedly facing the allegations of financial misappropriation in Township Department of Pakistan Steel and in such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process of inquiry against him and set aside his show cause notice on any technical ground, which will amount to interfering in the right of authority to inquire into allegations against the Petitioner.

11. The Petitioner has not been able to show, in view of the above facts and circumstances, as to how he is prejudiced by issuance of show cause notice as he has been facing the inquiry proceedings on the aforesaid allegations, which is the right of the competent authority to probe the allegations of misappropriation of public funds.

12. Learned counsel for the Petitioner during course of arguments stated that FIA has already initiated inquiry on the aforesaid issues; therefore, he cannot be vexed twice for the same allegations. Suffice it to say that any criminal proceedings have no

binding effect upon the departmental proceedings and both can be initiated if the delinquent officer is found guilty of misconduct and corrupt practices. Hence, this plea is discarded. The above proposition is already settled by the Hon'ble Supreme Court in the case of ***Khaliq Dad vs. Inspector General of Police and others*** (2004 SCMR 195).

13. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity or material irregularity in the inquiry report and impugned show cause notice dated 13.11.2018 passed by the Respondent-Pakistan Steel. Consequently, the instant Petition is dismissed in limine alongwith the listed application(s).

JUDGE

JUDGE

Nadir/PA.