

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1068 / 2019

Plaintiff: **Muhammad Tarique Khan through
through Mr. Junaid Ahmed Advocate.**

Defendants: **Trading Corporation of Pakistan & Others
through Mr. Fayyaz Ali Metlo Advocate.**

For hearing of CMA No. 8961/2019.

Date of hearing: **17.12.2019.**

Date of order: **17.12.2019.**

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Directions and primarily the Plaintiff is aggrieved by a Show Cause Notice dated 11.06.2019 and through listed application seeks a restraining order against the Defendants from taking any adverse action pursuant to the said Show Cause Notice .

2. Learned Counsel for the Plaintiff submits that the Plaintiff presently works in Defendant No.1 as a Manager and is aggrieved by Show Cause Notice dated 11.06.2019; that the said Show Cause Notice is not sustainable as it has been issued by the authorized officer with malafide intentions; that earlier a Show Cause Notice dated 12.04.2017 was issued which was impugned by filing Suit No.1097/2017; however, after assurance from the management regarding a favorable decision, it was withdrawn vide order dated 25.08.2017; that now after lapse of considerable time the impugned Show Cause Notice has been issued whereas, the inquiry officer in his report dated 28.12.2018 has decided the matter in Plaintiff's favour; that the authorized officer as per Rules was not competent to issue another Show Cause Notice; that it is a case

of double jeopardy; that notwithstanding the fact that the authorized officer was not bound by the report of the inquiry officer; but at the same time a new Show Cause Notice for imposing major penalty of removal from service cannot be issued without any proper and justifiable reason; that in earlier inquires also, the Plaintiff was exonerated; that the issue as raised in the first Show Cause Notice has been decided on a number of occasions in favour of the Plaintiff; hence, there is no further ground available and therefore, the impugned Show Cause Notice be set aside and the application be allowed. In support he has relied upon ***Abdul Hafeez Abbasi V. MD, Pakistan International Airline (PIA) Corporation, (2002 PLC (C.S) 1083), Pakistan International Airline (PIA) Corporation V. Nasir Jamal Malik (2001 SCMR 934), Anisa Rehman V. PIAC and another (1994 SCMR 2232), UK International Proprietorship V. Trading Corporation of Pakistan (2006 CLC 679), Government of NWFP V. I.A. Sherwani (PLD 1994 SC 72), Anwar Hussain V. Agricultural Development Bank of Pakistan (PLD 1984 SC 194), Saeed Khan Mobejo V. Trading Corporation of Pakistan (2005 PLC (C.S) 1171), Ghulam Mustafa Khan V. Federation of Pakistan (2010 PLC (C.S) 426), Lt. Cdr (R) Abdul Aziz Narejo V. Karachi Port Trust (2015 PLC (C.S) 699), Aftab Ahmed Soomro V. Government of Pakistan (Ministry of Production and Industries (2006 PLC (C.S) 348), Lubna Asif Ayub V. President of Islamic Republic of Pakistan (2006 PLC (C.S) 1352) and S. M. Nawaz V. Federation of Pakistan Ministry of Defence (2010 PLC (C.S) 501).***

3. On the other hand, Learned Counsel for the Defendants has raised an objection that instant Suit is barred under Order 23 Rule 1 CPC inasmuch as on the same cause, earlier Suit was withdrawn

without any permission of the Court to file a fresh Suit; that present Suit has been filed with suppression of facts; that the Plaintiff has failed to bring on record the entire facts, hence is not entitled for any equitable relief; that the authorized officer pursuant to Rule 5(4) of the Service Rules of the Defendant No.1 was fully competent to issue the Show Cause Notice in question; that the inquiry officer has not given his report on the basis of available evidence; that there is no violation of any rule; hence, the Suit is otherwise incompetent; that the authorized officer in law is not bound to agree with the findings of the inquiry report; that the Show Cause Notice in question has in fact offered an opportunity to the plaintiff to explain; hence, the application is liable to be dismissed.

4. I have heard both the learned Counsel and perused the record. Insofar as facts are concerned, it appears to be an admitted position that the Plaintiff is an employee working with Defendant No.1 presently as a Manager. It further appears that earlier a Show Cause Notice was issued to the Plaintiff on 12.4.2017, and pursuant to that a charge sheet was issued on 15.08.2017 which was responded by the Plaintiff and pursuant to such Show Cause Notice as well as the charge sheet, the inquiry officer after a detailed examination of the entire set of allegations and the response of the Plaintiff, conducted a full-fledged inquiry, wherein, various witnesses appeared and a final conclusion was drawn in favor of the Plaintiff which is relevant for the present purposes and was in the following terms:-

“6. Conclusion:

- The operational activities in the field are performed by the Officers / Officials posted for operational activities and the success of the operation depends upon the joint efforts of all team members from Top to Bottom. However, the proper SOP, Job Descriptions of individual, updated rules have the utmost importance

for each team member to proceed by providing spelled out procedure. Whereas, in the case under reference there was lack of these guidelines thereby resulting such incident.

- It is pertinent to mention that even at the time of final reconciliation the actual loss was neither properly calculated as per Tender terms & conditions nor the reconciliation process was completed at subsequent stage, due to which the exorbitant claim amount was reported before the Honorable High Court as well as Auditors.
- The Bank Guarantees of the supplier were released without considering the tender terms & conditions but the same were released by twisting the case with the help of interpretation of International Commercial Terms (INCOTERM).
- The cargo was fully insured and TCP included the cost of insurance premium in its claim, however, the claim was not lodged on underwriter / Insurance Company. The loss could be avoided if the claim was lodged timely.
- TCP has filed suit No.1083/2007 against the representative of Ship-owner M/s. Tradesia & Others for recovery of Rs.10,140,832.00 in the High Court of Sindh, Karachi, on account of shortage and damaged sugar, which can available opportunity, availed by TCP.
- ***On the basis of the facts of the case and the available record, it has been concluded that all the actions taken by him during operation duty were in the knowledge of seniors as these were not questioned even at subsequent stage, as such no allegation is proved against the officer in his individual capacity.***
- ***In view of the above, sufficient grounds are available to exonerate Mr. Tariq Khan from charges leveled against him vide Show Cause Notice / Statement of Allegations dated 15-08-2017.***
- This report may please be dealt with due secrecy to avoid any adverse impact on TCP's standing in the Court of Law."

5. Perusal of the aforesaid findings of the inquiry officer reflects that after considering the material he has come to a conclusion that there are sufficient grounds available for exonerating the Plaintiff, as all the actions taken by him were in the knowledge of his immediate superiors; were not questioned subsequently; hence no allegation is provide against him.

6. It further appears that the first Show Cause Notice was initially impugned by the Plaintiff by filing Suit No.1097/2017 and an ad-interim order was passed, whereby, the Defendants were restrained from passing of any final order pursuant to the impugned Show Cause

Notice dated 12.04.2017. It further appears that thereafter, on 25.08.2017 the Plaintiff withdrew his Suit on the ground that the Chairman of Defendant No.1 has assured to consider his grievance sympathetically due to certain changes in the management of Defendant No.1. Thereafter, the authorized officer, pursuant to the inquiry report in question, has issued impugned Show Cause Notice dated 11.06.2019 and has asked the Plaintiff to explain as to why a major penalty of dismissal from service may not be imposed upon him. The said Show Cause Notice reads as under:-

“SHOW CAUSE NOTICE

Whereas you Mr. Muhammad Tarique Khan while serving as Ex-Deputy Manager (Shipping), CSD have committed certain acts of “Inefficiency” and “Misconduct” which render you liable to disciplinary action under the TCP Employees (Efficiency and Disciplinary) Rules, 1975 and were proceeded against under Rule 3(a) & (b) of TCP Employees (Efficiency & Disciplinary) Rules, 1975. You were issued Charge Sheet and Statement of Allegations and an inquiry was initiated vide Order No.TCP(HR)/9-47/2016 dated August 15.2017.

2. Whereas Mr. Muhammad Munir, General Manager was appointed as Enquiry Officer who has submitted the inquiry report and has concluded:

“On the basis of the facts of the case and the available record it has been concluded that all the actions taken by him during operation duty were in the knowledge of seniors as these were not questioned even at subsequent stage, as such no allegation is proved against the officer in his individual capacity.”

3. And whereas the undersigned in his capacity as the “Authorized Officer” on considering the findings of Inquiry Officer, has reached to the conclusion that the **findings of the Inquiry Officer are erroneous, misleading, irrelevant, and contrary to the facts of the case.**

4. Now therefore, you Mr. Muhammad Tarique Khan are called upon to Show Cause in writing within 07 days of the date of receipt of this notice as to why major penalty of “dismissal from service” as provided in Rule 4(1)(b)(iv) of TCP Employees (Efficiency & Disciplinary) Rules, 1975, may not imposed upon you. You are also required to indicate whether you would like to be heard in person.

5. In case no reply is received within the specified period, it would be presumed that you have no defence to offer or you have declined to offer the same and accept the charges and accept the charges and in that case action against you shall be taken ex-parte.

Encl: Copy of Inquiry Report.

-Sd-
Sheikh Zahid Masood
Executive Director (Finance) / Authorized Officer

7. Perusal of the impugned Show Cause Notice reflects from Para 3 thereof, that the authorized officer on considering the findings of the inquiry officer, has reached to the conclusion that the findings of the inquiry officer are *erroneous, misleading, irrelevant and contrary to the facts of the case* and therefore, he intends to proceed further for imposing major penalty of dismissal from service. At the very outset, learned Counsel for Defendants was confronted as to under what authority the authorized officer has decided to proceed further with a final Show Cause Notice, as he himself has observed that the findings of the inquiry officer are *erroneous, misleading, irrelevant and contrary to the facts of the case* and in support the learned Counsel has referred to Rule 5(4) of the TCP Employees (Efficiency And Discipline) Rules, 1975, pertaining to inquiry proceedings which reads as under:-

“(4) On receipt of the report of the Inquiry Officer or Inquiry Committee or, where no such Officer or Committee is appointed, on receipt of the explanation of the accused, if any, the authorized officer shall determine whether the charge has been proved. If it is proposed to impose a minor penalty he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority along with the charge and statement of allegations served on the accused, the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed and his own recommendations regarding the penalty to be imposed. The authority shall pass such orders as it may deem proper.”

8. Perusal of the aforesaid sub-rule reflects that on receipt of the report of the inquiry officer, the authorized officer shall determine whether the charge has been proved, and if it is proposed to impose a minor penalty, he shall pass the order accordingly. It further provides that if it is proposed to impose a majority penalty, then he shall forward the case to the authority along with the charge and statement of allegations served on the accused as well as the explanation of the accused along with the findings of the Inquiry Officer or Inquiry Committee and *his own recommendations regarding penalty to be imposed,*

whereafter, the authority shall pass such orders as it may deem proper. From perusal of the above sub-rule (4) it is noted that nowhere any such authority has been conferred on the authorized officer to issue a final Show Cause Notice for imposition of a major penalty of dismissal from service, especially in a case when the inquiry report of the officer exonerates an employee. The most he can do is to send the matter to the competent authority with his own opinion and recommendation(s); but he himself cannot issue a final Show Cause Notice for imposition of a major penalty of removal from service. In this case the authorized officer has come to a definite conclusion that the inquiry report is *erroneous, misleading, irrelevant and contrary to the facts of the case* then he could have in the alternative, at best, recommended for another inquiry; but cannot under any circumstances on the basis of a favorable inquiry issue a final Show Cause Notice for imposing a major penalty of dismissal from service. In fact at the time when impugned Show Cause Notice was issued, before him according to his own stance, there was no inquiry report to proceed any further as he had discarded the same, and therefore, no final Show Cause Notice can be issued and sustained. Apparently, on the basis of the record placed before the Court, this appears to be an exercise of unfettered discretion on the part of the officer, perhaps to settle some personal grudge, which this Court cannot permit; whereas, apparently the rules have been violated, and the impugned action has been taken in haste and without proper application of mind.

9. In view of hereinabove facts and circumstances of this case, I am of the view that the Plaintiff has made out a prima facie case and balance of convenience lies in his favour, whereas, if the injunction is refused irreparable loss would be caused to him as admittedly the

impugned Show Cause Notice appears to be without any lawful authority and jurisdiction and if permitted the Defendants would proceed further on such basis which shall seriously prejudice the Plaintiff. Accordingly, by means of a short order on 17.12.2019, listed application was allowed in the terms that the impugned Show Cause Notice shall remain suspended and defendants were restrained from any further proceedings till final adjudication of this Suit and these are the reasons in support thereof.

J U D G E

ARSHAD/