



AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 4888 of 2019**

Shrirang Sharad Pathak S/o Shri Sharad Pathak Aged About 58 Years R/o H- 3, Vishal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Tourism, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Tourism Board, Through The Manadging Director, Udyog Bhawan, Second, Floor, Ring Road, No. 1, Raipur, District Raipur Chhattisgarh

---Respondents

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For Petitioner	:	Mr. Kshitij Sharma, Advocate.
For State	:	Mr. Jitendra Pali, Dy. A. G.
For respondent No. 2	:	Mr. Yogendra Pandey Adv. on behalf of Mr. Animesh Tiwari, Adv.

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**04/07/2019**

1. The Challenge in the present writ petition is to the show-cause notice dated 12.06.2019 whereby the respondent No. 2 has sought for an explanation of the petitioner as to why the promotion that was granted to the petitioner as early as on 25.11.2005 should not be recalled.
2. At the outset, this Court is not inclined to entertain the writ petition for the simple reason that the petitioner has been issued with only a show cause notice. The petitioner has been given a chance to reply to the show-cause notice and the respondents inturn are now expected to properly appreciate the reply before they proceed further with the show-cause notice.



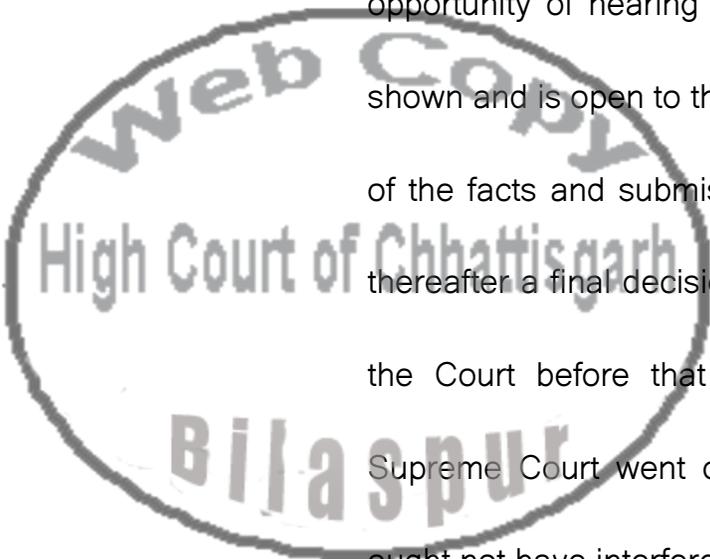
3. It is a settled position of law that the High Court under Article 226 of the Constitution of India would not sit as an Administrative Appellate Body on the show-cause notice issued and decide the veracity of contents of show-cause notice.

4. The Supreme Court in the case of **State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179]** dealing with the scope of judicial interference in disciplinary matters was of the opinion that, “the purpose of issuing show cause notice is to afford an opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfere with the show cause notice.

5. A similar view has been taken by the Supreme Court in case of **Union of India Vs. Kunisetty Satyanarayana**, reported in 2006 (12) SCC 28, the Supreme Court held that:-

“15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.”

“16. No. doubt, in some very rare exceptional cases the High Court can quash a Charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for





some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

6. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565] in paragraph 10 & 12 has held as under:-

“10. Ordinarily a writ application does not lie against a charge-sheet or 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.”

7. Reserving the right of the petitioner to give a detailed reply to the show-cause notice Annexure P/1 dated 12.06.2019 and respondents are expected to consider the objection/explanation that the petitioner shall submit in his reply to the show-cause notice objectively before proceeding further on it. The petitioner would also be at liberty to raise the objection so far as the competency and the Jurisdiction of the respondents in initiating the show-cause notice.
8. With the aforesaid observations, the present writ petition stands disposed off.

**Sd/-  
(P. Sam Koshy)  
Judge**