

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6291 of 2018

Capt. Abrar ArifPetitioner

Versus

The Secretary Maritime Ministry & others Respondents

C.P No.D-6292 of 2018

Capt. Hamid Khan JadoonPetitioner

Versus

The Secretary Maritime Ministry & others Respondents

Petitioners: Through Mr. Naheed A. Shahid Advocate.

Date of hearing: 04.09.2018

ORDER

ADNAN-UL-KARIM MEMON,J:- The petitioner has challenged the impugned notices dated 20.08.2018 and 29.08.2018, whereby the Competent Authority of KPT formed an Inquiry Committee to probe the allegations against the Petitioner, who have purportedly obtained Passport in private capacity while working in KPT and travelled abroad without No Objection Certificate.

2. The gist of the case of the Petitioner is that he is employee of Karachi Port Trust (KPT) working as Pilot in BPS-19 since June 2009. It is averred by the Petitioner that in the month of August 2018 the Respondent KPT formed an Inquiry Committee to investigate the

following aspects of the matter and directed the Petitioner to appear before the Inquiry committee along with record.

“Sub: Travel Abroad without NOC

The competent authority has formed an enquiry committee, comprising the following officers:-

1. *Mr. Nazeer Ahmed Sehar, General Manager (finance) Convener E/C*
2. *Mr. Zahid Hussain, Deputy Engineer Member E/C*
3. *Mr. Ahmed Ali Brohi Dy. Manager Mgt. Rep*

The committee will enquire upon the following areas as per TOR: _

- a) *To find out the factual position of the case.*
- b) *To find out and investigate how the pilots namely Capt. Abrar Arif & Capt. Hamid Khan Jadoon have obtained passport in private capacity while working in KPT.*
- c) *To check and find out whether they get NOC from Port Intelligence Officer, KPT before leaving abroad or not.*
- d) *To investigate and find out whether they possessed the Government Passport and had applied for NOC regarding obtaining Government Passports during KPT service.*
- e) *To check that they had proceeded ex-Pakistan leave whereas they had applied for domestic leave on full pay for visiting various places of KPT & Punjab.*
- f) *To investigate and check from available immigration record regarding their visits abroad (exit & entry), names of countries & duration period from the date of appointment in KPT to till date.*
- g) *To investigate whether the officers are involved in any suspicious activities for which they mischievously obtained private passports and went abroad without permission and NOC.*
- h) *To find out any mis-declaration and concealment of facts done by the officers while serving in Government service.*
- i) *To find out the malafide intentions (if any) of the officers concerned.*
- j) *Fix responsibility and indicates lapses (if any).*
- k) *Any other observations(s)/ recommendation(s).*

Petitioners have submitted that in the month of June 2018, the Petitioners and other aggrieved employees of KPT filed a C.Pl. No. D-4543 of 2018 against Respondent KPT by impugning the re-appointment of retired Pilot on contract basis in KPT and this court vide order dated 06.06.2018 passed Interim Order. Petitioners have submitted that the Respondent KPT started victimizing them with respect to their foreign travels on private passports. Petitioners have submitted that the Respondent KPT initiated enquiry on the aforesaid subject and both the Petitioners appeared before the enquiry committee on 27.08.2018, however Petitioners were directed to appear before the enquiry committee on 31.08.2018 and both the petitioner appeared accordingly. It is further stated that the impugned Notices are not only in contravention to the

provisions of the relevant KPT Act and Efficiency and Disciplinary Rules, 2011. Petitioners have averred that they being aggrieved by and dissatisfied with the aforesaid impugned notices have filed the instant Petitions on 03.09.2018.

3. A query was raised by this Court as to how the instant petitions are maintainable against the constitution of enquiry committee, since the enquiry has yet to be concluded by the order of the Competent Authority of KPT. In reply to the query, Ms. Naheed A Shahid, learned counsel for the Petitioners has argued that the enquiry committee constituted by the Respondent KPT is illegal and is vindictive; that this is a clear case of nepotism and violation of law; that the impugned notices is a counter blast of C.P. No. D-4543 of 2018 filed by the Petitioners and other employees of the KPT before this Court; that the Petitioners have never been served with any sort of misconduct on their part; that the Petitioners have never been called for their explanation nor objected on such leave and / or on carrying private passport; that five years have passed from the date of their last foreign travel of the petitioners hence the Respondent KPT has no legal justification to constitute a committee to probe the alleged allegations; that the Respondent KPYTY have failed to provide necessary documents to the Petitioners to defend themselves before the enquiry committee on the purported allegations of travelling abroad on private passport; that the impugned notices of enquiry in absence of legal sanction is an abuse of the process of law; that there is grave apprehension that the Petitioners may be victimized at the hand of Respondent KPT including dismissal from services; that Petitioners are not civil servants as such the condition of NOC and official passport is not applicable to the employees of KPT to travel on private passport; that the enquiry committee is not acting in accordance with law and rules framed by the KPT. She further contended that the impugned notices

have not been issued by the Competent Authority as defined under the law, as such the impugned notices are a nullity in the eyes of law.

4. We have considered the contention of the learned counsel for the Petitioner and perused the material available on record. It may be stated that in view of urgency shown by the learned counsel for the Petitioners she has argued the entire case on merits.

5. A bare perusal of impugned notices dated 20.08.2018 and 29.08.20-18 shows that the Petitioners were required to appear the enquiry committee enquiring certain allegations he. The entire case of the Petitioners is that since the formation of enquiry committee to probe the allegations is discussed in the preceding paragraph is based on malafide intention in order to punish the Petitioners for their act of filing C.P. No. D- 4553 of 2018.

6. Before dilating upon the above, at the first instance we would like to consider whether the Petitioners can challenge the impugned notices and subsequent initiation of enquiry proceedings pending against them in a Constitution Petition.

7. In the light of foregoing factual position of the case, it appears that the Petitioners have misconstrued the things and have approached this Court for the aforesaid relief which in our view could hardly be granted in a Constitutional jurisdiction of this Court for the simple reason that the Petitioners are still facing the disciplinary proceedings initiated against them and a date and time for personal hearing of the Petitioners 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 hereinabove.

8. In law to form a enquiry committee to prove the allegations cannot be construed as a punishment. In view of such position, in our view the Petitioners cannot file a petition against formation of enquiry

committee and initiation of its proceedings. We are of the considered view that the outcome of the enquiry has yet to come, against the adverse result of enquiry, if any, the Petitioners will have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the impugned notices illegal or void. More so, the Petitioners' objection on the issuance of impugned notices is technical and procedural in nature, since it is not his case that the charges mentioned in the notices are the outcome of some malice or ulterior motives and/or against the principles of natural justice.

9. The Petitioners are admittedly facing the allegations of travelling abroad without NOC and on private passport in the KPT and in such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process of enquiry against them and set-aside the impugned notices on any the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioners.

10. The Petitioners have not been able to show, in view of above facts and circumstances, as to how they are prejudiced by issuance of impugned notices.

11. In the light of above discussion and case law referred to above, the instant petitions merit no consideration and the same is accordingly dismissed in-limine along-with the listed application(s).

JUDGE

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