

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P.NO.26318 OF 2015

Between:

The State of Andhra Pradesh,
Rep by its Principal Secretary, Home Department,
Secretariat Building, Hyderabad and two others.

Petitioners

And

D. Ramanjaneyulu, S/o D. Nagappa,
Office Manager (Retd) O/o The Deputy
Inspector General of Police, Ananthapuramu Range,
Ananthapuramu, D.No.6-2-481, Kovur Nagar,
Anantapuramu and two others.

Respondents

JUDGMENT PRONOUNCED ON: 25.08.2015

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT JUSTICE ANIS
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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | No |

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For the Petitioners : G.P. for Services (A.P.).

For the Respondents : Sri K. Ramamohan Mahadeva.

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> Head Note:

? CITATIONS:

(2013) 6 SCC 515

(2013) 6 SCC 530

(1985) 3 SCC 378

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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ORDER:

(per Hon'ble Sri Justice Nooty Ramamohana Rao)

The State of Andhra Pradesh, its Director General of Police and the Principal, Police Training College, Ananthapur are the petitioners in this writ petition, which is directed against the order passed by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') in O.A.No.8704 of 2012 instituted by the 1st respondent herein calling in question the orders passed by the State Government in their G.O.Ms.No.62 Home (Service.I) Department, dated 25-03-2008 imposing the punishment of withdrawing two increments on permanent basis.

The 1st respondent herein, at the relevant point of time, was working as an Office Superintendent in the Office of the Police Training College at Ananthapur. It appears that six police constables, who have been working in the said Training College, staked a claim for payment of certain incentive allowance at par with others. While sanctioning the said allowance for twenty seven other police constables, these six police constables have not been accorded such an incentive. Therefore, those six police constables appear to have represented to the Additional Superintendent of Police working in the said Training College holding the charge of the post of Principal of the Training College, who accorded sanction of payment of additional incentive orally. Therefore, based upon that oral directive of the Additional Superintendent of Police, those six police constables have also been paid the incentive allowance at par with the remaining twenty seven police constables, but subsequently, such drawal and disbursement of the additional incentive has been objected to by the Audit. Hence, necessary recoveries are made.

The State Government, in their G.O.Ms.No.227, General Administration Department, dated 4-07-2000, passed orders based upon the circumstances reported by the Director General of Dr.M.C.R.

Human Resource Development Institute of Andhra Pradesh, according sanction for payment of 15% of basic pay as incentive to faculty on deputation to the State Training Institutes listed out earlier in G.O.Ms.No.188, General Administration (AR & T-III) Department, dated 29-03-1988. It was not in dispute that the Police Training College, Anantapur is one such Institute mentioned in G.O.Ms.No.188, dated 29-03-1988, but however, the distinction that is sought to be drawn was, while the twenty seven police constables were sent up on deputation basis to the Police Training College, Ananthapur, the six police constables have been regularly recruited to the service of the Police Training College who have also claimed 15% additional incentive allowance for which they are not eligible. Hence, the incentive allowance for these six police constables should not have been claimed and drawn.

Initially, it was suspected that the money has been drawn representing the additional incentive allowance for the six police constables also for deriving certain additional pecuniary gain by the office staff of the Police Training College, but however, mercifully, the enquiries revealed that there was no such pecuniary gain either expected or obtained by the employees of the Police Training College. Therefore, the only question that falls for consideration by the competent authority was, whether the conduct of the staff of the Police Training College in drawing the additional incentive for the remaining six police constables also at par with the other twenty seven police constables, based upon the oral directive of the Additional Superintendent of Police of the Training College, is a *bona fide* conduct or it would amount to a misconduct. The State thought that unauthorized drawing of money from the Treasury, though the same was recovered from the six police constables later on and remitted back to the Treasury, amounts to misconduct. Hence, they were subjected to disciplinary proceedings.

Strangely, during the course of the disciplinary proceedings, all

the beneficiary police constables have been cited as witnesses to sustain the charge. In addition, the Deputy Superintendent of Police, who conducted the preliminary enquiry, was also examined as a witness. All the witnesses, in one voice, have asserted that it is the Additional Superintendent of Police of the Training College, who gave oral instructions for drawing and disbursing the additional incentive for the remaining six police constables also, as was done in the case of other twenty seven police constables. In fact, the Preliminary Enquiry Officer has clearly pointed out that the error has been committed due to the oral instructions of the Additional Superintendent of Police. For strange reasons, the Additional Superintendent of Police has not been examined for the purpose of establishing that there were no such oral instructions issued by him, authorizing drawing and disbursement of the incentive to the remaining six police constables. In the absence of examination of the Additional Superintendent of Police, the issue boils down to this; as to how far the State is justified in trying to penalize someone in the ministerial establishment for having carried out the oral instructions issued by a superior police officer.

Like in any other hierarchal organization bound by discipline, the instructions / orders passed by the superior officers are required to be carried out, but however, as a rule of precedence, wherever oral instructions / orders are issued, immediately confirmation of the same is to be solicited in writing. But, in the instant case, we are dealing with the establishment of a Police Training College. The primary objective of this College is to instill an absolute sense of devotion and dedication to the duty and it is sought to be drilled into the heads of all the people, who come there for undergoing training that the orders of the superior officers must be carried out first before they could be acted otherwise. Therefore, we can hardly find the conduct of the employees of the ministerial establishment of the Police Training College as blameworthy for having carried out the oral orders / instructions of the Additional Superintendent of Police, particularly, all the more so, when

the Officer, who issued the instructions, is the next superior officer to the Head of the Training College itself, as at that point of time, the Additional Superintendent of Police, was also holding the charge of the post of Principal of the Training College. Therefore, the *bona fides* behind the conduct of the ministerial establishment of the College have to be appreciated, particularly in the backdrop when the initial suspicion that monies have been withdrawn in anticipation of some pecuniary gain by the ministerial establishment, is found without any substance.

The learned Government Pleader for Services-I (A.P.) Ms. Rajya Lakshmi would strenuously contend before us that the Tribunal has exceeded its authority and jurisdiction in interdicting a punishment order imposed by the State Government against the employees of the Police Training College for having drawn the additional incentive to as many as six Police Constables, who are otherwise not eligible to be paid any such incentive at all. The learned Government Pleader would submit that, if for any reason, the Tribunal interferes with the disciplinary action, then it should remit the matter back for consideration afresh in accordance with the Rules of discipline. She relies upon the Judgment of the Supreme Court in ANANT R. KULKARNI v. Y.P. EDUCATION SOCIETY AND OTHERS^[1], which held as follows:

“The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion.”

Every disciplinary enquiry has got to be concluded based upon

the material gathered at the disciplinary enquiry. The findings of guilt must be supported by the evidence so collected. If the material on record of the enquiry leads to one conclusion, an exactly opposite conclusion cannot be drawn based thereon. Any such attempt would only amount to a perverted reasoning. When we have perused the material gathered during the course of the disciplinary enquiry, we have clearly noticed that all the witnesses including the Deputy Superintendent of Police, who conducted the preliminary enquiry into the matter, in one voice, have talked of the orders / instructions issued by the Additional Superintendent of Police, at that time, for drawing and disbursal of the additional incentive to the six police constables also. Possibly, the Additional Superintendent of Police, who was holding the charge of the office of the Principal of the Training College, may have found some justification behind the claim of the six police constables for additional incentive, inasmuch as, twenty seven other similarly-placed police constables, who are also doing similar work in the Training College are paid such an incentive allowance. Therefore, at the first blush, the Additional Superintendent of Police appears to have been carried away that the six police constables of the Training College are discriminated. It is, obviously, upon second thought that it was realized that the additional incentive is authorized to be paid only to those who have been drawn on deputation basis. That was the reason why the recovery was affected from all the six Police Constables to whom the additional incentives were drawn, unnecessarily. Therefore, the entire action of drawing and then disbursing the additional incentives to the six police constables of the Police Training College is not without any *bona fides*. At best, it amounted to an error of judgment on the part of the officer concerned and for mechanically carrying forward the instructions orally given to the ministerial establishment, without proper verification. Misconduct is one, which falls foul of the approved conduct. There should be something more that should be attributed to the conduct of an

employee before it transforms itself into a misconduct as the very word suggests. Since, we have found that nothing of that element has been held established, imposition of punishment is totally unwarranted and uncalled for. The reason behind is that, a punishment, listed out under Rule-9 of the Andhra Pradesh Civil Servants (CCA) Rules, can be imposed only for a proven misconduct. When the element of misconduct itself is missing, the question of penalizing any such individual would never have arisen. Hence, we are of the opinion that the ratio in CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA AND OTHERS v. A MASILAMANI^[2] is not attracted at all. On the other hand, the principle enunciated in ANANT R. KULKARNI's case cited (1) supra, gets attracted. Justice Dr. B.S.Chauhan, speaking for the Court, in paragraph 14, held as under:

“14. In the present case, the High Court after reappreciating the entire evidence available on record, came to the conclusion that in the course of enquiry proceedings, certain witnesses had not been examined in the presence of the delinquent respondent, and that hence, no proper opportunity was given to him to cross-examine such witnesses. Moreover, the documents relied upon by the enquiry officer, were not properly proved by any witness and ultimately, it was held that the findings of the enquiry officer stood vitiated for non-compliance with mandatory requirements of the Regulations applicable herein, as well as for violating the principles of natural justice. The Court further held that the appellate authority had not applied its mind to the case, and had failed to consider the case as required under Regulation 46(2) of the 1960 Regulations. Thus, in light of the aforementioned observations, the Court set aside the punishment imposed upon the respondent, and also refused to give the appellate any opportunity to continue the enquiry from the point that it stood vitiated, consequently therefore, denying any opportunity to prove the documents relied upon, as also denying the respondent adequate opportunity to cross-examine the witnesses concerned, etc. only on the ground that a long time had now passed.”

The ends of justice also demand interference in this matter for, the ministerial establishment has not acted on their own in drawing and disbursing the money. Further, when its reversal was ordered, it was faithfully implemented and monies have been recovered. Thus,

the interests of the State have been protected clearly. This apart, the 1st respondent has retired from service more than four to five years back itself. He is now a pensioner. Therefore, we find that the ends of justice have been served better by the Tribunal in interfering with the order of punishment imposed on him.

We find no reason warranting interference with the order passed by the Tribunal, particularly, in view of the defect pointed out in conducting the disciplinary proceedings by not examining the then Additional Superintendent of Police and also not initiating any action against the said officer. The State Government has left an uneasy feeling behind by leaving aside the superior Police Officer unscathed and seeking to penalize the lowly-placed ministerial establishment for the fault of having carried out the oral instructions of a superior Police Officer. We can easily imagine the greater ordeal one would have passed through if the oral orders / instructions of a superior Police Officer are not carried out promptly.

This apart, the Supreme Court in ***ANIL KUMAR v. PRESIDING OFFICER AND OTHERS***^[3] has spelt out the principle in paragraphs 5 and 6 thereof as under:

“ 5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. [In Madhya Pradesh Industries Ltd. v. Union of India](#) (AIR 1966 SC 671) , this Court observed that a speaking order will at best

be a reasonable and at its worst be atleast a plausible one. The public should not be deprived of this only safeguard. Similarly in [Mahabir Prasad v. State of Uttar Pradesh](#) ((1970) 1 SCC 764), this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

It is, no doubt, true that the above principle has been enunciated while dealing with a workman of an Industry, but nonetheless, the principle behind it holds good even for a public servant.

Hence, we have no hesitation to dismiss this writ petition and we accordingly do so, but however, without costs.

**NOOTY RAMAMOHANA
RAO, J.**

ANIS, J.

Note:
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- [\[1\]](#) (2013) 6 SCC 515
[\[2\]](#) (2013) 6 SCC 530
[\[3\]](#) (1985) 3 SCC 378