

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS

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WRIT PETITION No.21939 OF 2013

ORDER: (per Hon'ble Sri Justice K.C.Bhanu)

This Writ Petition, under Article 226 of the Constitution of India, is filed to call for the records relating to the order, dated 05.11.2012, in Original Application No.5299 of 2009 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') and quash the same.

2. Heard both sides.

3. A preliminary enquiry was initiated against respondent No.1 consequent upon his involvement in a criminal case registered in Crime No.392 of 1996 for the offence punishable under Section 307 read with 34 of the Indian Penal Code 1860. In connection with the said crime, respondent No.1 was arrested on 04.11.1996 and released on bail after 57 days. Article of charge was framed against respondent No.1 and three others made kill one Harsha Kumar, for which, respondent No.1 had given an explanation denying the same. Not satisfied with the same, a regular departmental enquiry was conducted and in the said enquiry, eight witnesses were examined and eleven documents were marked on behalf of respondent No.1. The Enquiry Officer, having considered the oral and documentary evidence, came to the conclusion that the Article of charge levelled against respondent No.1 has been proved. Therefore, a show cause notice was issued proposing the punishment, for which respondent No.1 had given explanation. As the explanation submitted by respondent No.1 was not satisfactory, he was dismissed from service. Challenging the said dismissal order, respondent No.1 filed an appeal before the appellate authority and the same was dismissed. Against the said dismissal

order, respondent no.1 filed revision before the revisional authority and the same was rejected. Respondent No.1 filed the aforesaid Original Application questioning the impugned proceedings in R.O.O.No.191/2006 C.No.1/PR/97, dated 01.12.2006 issued by petitioner No.2 and further proceedings in R.C.No.30/Rev.A3/2008 and H.O.O.No.179/2008, dated 17.04.2008, issued by petitioner No.3. The Tribunal, upon considering the material on record, allowed the Original Application setting aside the impugned proceedings, dated 01.12.2006 and 17.04.2008 directing to reinstate respondent No.1 into service with all consequential benefits. Challenging the same, Government filed the present Writ Petition.

4. There cannot be any dispute that in the departmental proceedings, it is for the disciplinary authority; in a case of appeal, it is for the appellate authority, and in a case of revision, it is for the revisional authority, to impose appropriate punishment. But there must be evidence on record to establish the misconduct. Ordinarily the Tribunal or the Court would not interfere with the order imposing punishment by the disciplinary authority, unless it is a case of no evidence.

5. The entire case rests upon the testimony of P.W.3-*de facto* complainant, who was examined during the course of enquiry. He stated that five persons came out of the room and stabbed him all of a sudden and then he had fallen on the ground with pool of blood. In the cross-examination, the delinquent officer put the following question to him, which reads as follows:

“Q. Whether I attacked you with knife”

Ans. In the attack I saw you but I can't say you attacked me.”

Except a vague and bald statement that five persons came out of the room and attacked all of a sudden and caused injuries to him, there is no other supporting evidence to believe his statement. Except the

presence of delinquent officer, no specific overt act is attributed.

6. As a matter of fact, police after completion of investigation, filed charge sheet against the delinquent officer and some others. Thereafter, the case was committed to the Sessions Judge, Rajahmundry. The learned Sessions Judge, Rajahmundry registered the same as Sessions Case No.284 of 2002 and the same was made over to II Additional Assistant Sessions Judge (Fast Track Court), East Godavari, Rajahmundry for disposal. During the course of trial, prosecution examined P.Ws.1 to 9 and got marked Exs.P.1 to P.13. As all the witnesses examined on behalf of the prosecution, did not support the case of the prosecution, the learned Public Prosecutor, who was conducting prosecution of that case, had sought permission of the Court to cross-examine them. Even after cross-examination, nothing has been elicited from these witnesses to show about the involvement of respondent No.1 and others in the said crime. Therefore, the learned Assistant Sessions Judge, Rajahmundry, rightly acquitted respondent No.1 and others. In the Sessions Case the *de facto* complainant was examined as P.W.1, but he did not support the case of the prosecution and was declared as hostile. Even in the departmental enquiry, he did not identify who stabbed him with a knife. When a specific question was put to the *de facto* complainant, he stated that he could not say whether the delinquent officer attacked him or not. Therefore, it is a case of no evidence. That is the reason why the Tribunal rightly interfered with the impugned proceedings of dismissal from service and that order needs no interference by this Court. However, there is no direction in the impugned order with regard to treating the suspension period of respondent No.1. Therefore, it is for the disciplinary authority to take appropriate decision as to how the suspension period of respondent No.1 can be treated.

7. With this observation, the Writ Petition is dismissed.

There shall be no order as to costs. Miscellaneous petitions, if any,
pending in this Writ Petition shall stand closed.

JUSTICE K.C. BHANU

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JUSTICE ANIS

JUNE 25, 2015
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THE HON'BLE SRI JUSTICE K.C.BHANU
AND
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WRIT PETITION No.21939 OF 2013

DATE: 25.06.2015

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