

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.994 OF 2015

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ORDER: (Per Hon'ble Sri Justice M. Satyanarayana Murthy)

This writ petition is preferred by the State challenging the order dated 04.01.2013, passed in Original Application No.6311 of 2012 by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') wherein the Original Application filed by the applicant was allowed *setting-aside* the impugned proceedings in PR.No.A6/19/2007, dated 12.07.2011, issued by the 4th respondent and also the consequential modification orders issued in proceedings C.No.C2/77/2011, R.O.O.No.474/2011, dated 20.10.2011, by the 3rd respondent and rejection orders passed by the 2nd respondent in L.Dis.No.33/IGP/South Zone/RR-II/2012, dated 13.02.2012.

2. The 1st respondent herein, working as Armed Reserve Police Constable in Kurnool district, involved in a Criminal case in C.C. No.290 of 2008 for assaulting and causing injuries on the body of S. Raghavendra Kumar, at Shoba Bar and Restaurant on 14.10.2007 at 07:30 p.m. The said Raghavendra Kumar lodged a complaint to Kurnool II Town police station, which was registered as case in Crime No.267 of 2007 for the offences punishable under Sections 341, 323 and 506 read with Section 34 of I.P.C. Subsequently, a charge memo was issued to the 1st respondent calling for his written statement. The 1st respondent submitted his written statement denying the charge; thereupon, a regular departmental enquiry was held against him, wherein the said Raghavendra Kumar, victim and other eye witnesses including the investigating officer were examined. Even though, neither the victim nor the eye witnesses supported the contentions of

the disciplinary authority but basing on the statement of investigating officer, the enquiry officer found the 1st respondent guilty. The copy of the enquiry report was served upon the 1st respondent calling upon his written submissions. On receipt of the same, the 1st respondent submitted his written submissions and, thereafter, the disciplinary authority imposed penalty of postponement of increment for a period of two years without any effect on future increments and pension.

3. Aggrieved thereby, he preferred an appeal before the 3rd petitioner, who, after considering the same, modified the penalty from postponing of increment for a period of two years to that of one year without any effect on future increments and pension; aggrieved thereby, he again preferred an appeal before the 2nd petitioner, which ended in rejection.

4. While the enquiry is going on, trial in C.C. No.290 of 2008, on the file of the Court of Special Judicial Magistrate of First Class (Prohibition and Excise), Kurnool went on, based on the same incident but the 1st respondent was found not guilty and acquitted by the learned Magistrate on 31.03.2009, before passing the order of imposing penalty by the 4th petitioner. Though, copy of the judgment in C.C. No.290 of 2008 was submitted before the 4th petitioner, it was not considered and even the 3rd petitioner also did not consider the same to correct the finding recorded by the 4th petitioner. As the modified punishment of postponement of increment for a period of one year without any effect on future increments and pension was passed by the 3rd petitioner, and his further appeal was rejected by the 2nd petitioner, 1st respondent filed O.A. No.6311 of 2012 before the Tribunal and the Tribunal allowed the Original Application *setting-aside* the orders passed by the disciplinary authority, recording its own reasons.

5. Aggrieved thereby, the present writ petition is preferred by the State challenging the finding of Tribunal raising various contentions, more particularly, the punishment imposed by the disciplinary authority, against the 1st respondent, on previous occasions, was not considered and that the 1st respondent, being a member of disciplinary force *i.e.*, Armed Reserve Police Constable, supposed to maintain decorum and discipline, involved in a Criminal case for assaulting Raghavendra Kumar. If the previous punishment imposed against the 1st respondent including the nature of duties he is supposed to discharge are taken into consideration, the penalty imposed by the disciplinary authority is just and reasonable. Therefore, the order under challenge, passed by the Tribunal is erroneous, and, prayed to *set-aside* the same by issuing a writ of *certiorari*.

6. At the stage of admission, we heard argument of learned Government Pleader for Services-I (AP). Learned Government Pleader mainly contended that *setting-aside* the order of penalty by the Tribunal is not based on any material and that the reasoning given by the Tribunal is *prima facie* against the principles of law, and, prayed to *set-aside* the impugned order passed by the Tribunal.

7. As seen from the material available on record, admittedly, the 1st respondent, working as Armed Reserve Police Constable in Kurnool district, is supposed to maintain utmost discipline in discharging his duties but the incident of assaulting Raghavendra Kumar did not take place while he was discharging his official duty as constable; however, the incident of assault, allegedly, took place outside the employment. The misbehavior in private life or outside the employment amounts to misconduct as held by the Apex Court in ***Govinda Menon Vs. Union of India***^[1].

8. Therefore, the misconduct outside the employment is amenable

to action by the disciplinary authority against the 1st respondent. Admittedly, when the learned Magistrate found the 1st respondent not guilty, acquitted him in C.C. No.290 of 2008, on 31.03.2009, by which time a parallel departmental enquiry was going on before the disciplinary authority against the 1st respondent. It is clear from the record that in C.C. No.290 of 2008, the Raghavendra Kumar, victim and other eye witnesses did not support the prosecution case, whereby the 1st respondent was found not guilty and was acquitted by the learned Magistrate; the departmental enquiry went on based on the same incident that allegedly took place in Shoba Bar on 14.10.2007 for assaulting Raghavendra Kumar. No doubt, both the Criminal proceedings and departmental enquiry can go on simultaneously and mere acquittal of the 1st respondent-Government Servant, in Criminal prosecution is not sufficient to exonerate him in departmental enquiry, but, the result of C.C. No.290 of 2008, acquitting the 1st respondent, can be taken into consideration. Proceedings in a Criminal case and departmental enquiry can proceed simultaneously with a little exception. Proceedings in a Criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas, in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of intensity of the offence allegedly committed by the charged employee or the other. The scope of proof required in those proceedings is also different from the standard of proof required in a Criminal case. While in departmental proceedings the standard of proof is one of preponderance of the probabilities, in a Criminal case, the charge has to be proved by prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the Criminal case are based on the same set of facts and the evidence in both the proceedings is common without there

being a variance as held by the Apex Court in ***M. Paul Anthony***
Vs. Bharat Gold Mines Limited and another^[2].

9. In ***Paul Anthony***², the Apex Court, after reviewing the entire law about proceeding Criminal case and departmental enquiry simultaneously, concluded that the Criminal proceedings and departmental enquiry can go on simultaneously with little exception. In view of the law declared by the Apex Court in ***Paul Anthony***², there is no bar to proceed both in Criminal proceedings and departmental enquiry for the misconduct. Therefore, the 1st respondent was tried for the offences and the departmental authorities proceeded to enquire into his misconduct.

10. In similar circumstances the Apex Court in ***G.M. Tank Vs. State of Gujarat and another***^[3], while considering the scope of departmental enquiry and the affect of acquittal in criminal case on the departmental enquiry, observed as follows:

“15. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental Case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution

has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

16. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in **Paul Anthony's case (supra)** will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

11. The facts of the present case are almost identical to the facts in **G.M. Tank³** case. Since the charge in the Criminal case, disciplinary proceedings is based on the same facts, witnesses and evidence, the incident is also the same. Hence, by applying the principle laid down by the Apex Court in **G.M. Tank³** to the present facts of the case, it can safely be held that the finding of the enquiry officer based on the testimony of investigating officer is without any basis and the same cannot be sustained.

12. The main contention of learned Government Pleader is that the Tribunal did not take into consideration the previous punishments imposed by the disciplinary authority, against the 1st respondent, while allowing the Original Application. No doubt, the previous punishments imposed against 1st respondent can be taken into consideration while imposing punishment under Rule 22 of Andhra Pradesh Civil Service (Classification, Control and Appeal) Rules, 1991. However, this

contention of learned Government Pleader cannot be accepted for the reason that the penalty orders passed by the petitioners 3 and 4 herein are silent with regard to considering the previous punishments imposed against the 1st respondent for his misconduct and unless the previous punishments imposed against the 1st respondent, is the ground and issued a notice calling for his written submissions proposing to take into consideration of previous punishments imposed against him, if any, the same cannot be taken into consideration while imposing the impugned penalty by the petitioners 3 and 4. Therefore, the question of considering previous punishments imposed by the disciplinary authority against the 1st respondent, while deciding O.A. No.6311 of 2012 by the Tribunal does not arise, as no ground is laid for such contention by the learned Government Pleader; that apart, no material is brought on record to accept the contention that penalty was imposed against the 1st respondent for his misconduct on previous occasions.

13. The preliminary enquiry report of the S.D.P.O. Atmakur shows that he recorded the statement of V.V. Naidu, C.I., Kurnool, who testified about collection of wound certificate *etc.*, but did not testify anything about the alleged assault and, even if, he testified anything about the alleged assault, it cannot be accepted. The other witnesses are E. Anjaneyulu Goud, Shankar Goud, Syed Sardar Basha. None of the witnesses did speak anything against the 1st respondent before the enquiry officer but still the enquiry officer found him guilty for the misconduct based on the oral evidence of PWs.1 and 2 *i.e.*, Circle Inspector and R.S.I. Home Guards, who conducted investigation in Crime No.267 of 2007. In fact, the powers of Tribunal and the appellate authority are limited and the Tribunals or Courts cannot replace the finding except to interfere with the punishment, if the punishment imposed by the disciplinary authority is shocking and disproportionate

to the gravity of the misconduct.

14. One of the main reasons for the Tribunal to *set-aside* the penalty imposed by the disciplinary authority is that the final report of the disciplinary authority is not in accordance with law and though no evidence is available, the disciplinary authority recorded a finding that the 1st respondent is guilty of misconduct. As seen from the material on record, it is clear that all the main witnesses including the victim, whom the 1st respondent allegedly assaulted, is silent with regard to the incident except the investigating officer, whose testimony is not reliable except for collection of evidence. The best witness is the victim; however, he did not support the case of disciplinary authority. It is settled proposition of law that the report should consist the precise statement with regard to evidence and finding supported by reasons but, in the instant case, the enquiry officer except making a statement that the investigating officer supported the case of disciplinary authority, ignoring the evidence of other witnesses including the victim, found the 1st respondent guilty for the misconduct.

15. It appears from the material on record that the enquiry officer did not act with utmost *bona-fides* in recording such finding and the 1st respondent was not fairly treated on par with the disciplinary authority by the enquiry officer. Therefore, such exercise of power by the investigating officer and disciplinary authority is nothing but an abuse of power. In those circumstances, the Tribunal can interfere and *set-aside* the enquiry report itself as held by the Apex Court in ***Union of India and others Vs. B.K. Srivastava***^[4].

16. In the instant case, the enquiring authority though found no iota of evidence recorded a finding that the 1st respondent is guilty of misconduct; such approach directly amounts to perversity. Imposing penalty without any material would certainly amount to perversity. On

the other hand, during course of hearing, the learned Government Pleader for Services would contend that the earlier penalty was imposed against the 1st respondent and found him guilty for his misconduct by the enquiry officer. Recording finding without any evidence by the enquiring officer and accepting such report directly amounts to perversity. Therefore, in those circumstances, the Tribunal or this Court can exercise its power to *set-aside* such perverse action of the enquiry officer and disciplinary authority when they did not exercise power treating the 1st respondent fairly.

17. Hence, we find no illegality or infirmity in the finding of the Tribunal, warranting interference of this Court, while exercising discretionary power under Article 226 of the Constitution of India. Hence, we are in total concurrence with the finding recorded by the disciplinary authority. Accordingly, the point is answered.

In the result, the Writ Petition is dismissed. In consequence, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, J

**M. SATYANARAYANA MURTHY,
J**

Date: 26-02-2015.

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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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(Order of the Division Bench delivered by
Hon'ble Sri Justice Ramesh Ranganathan)

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Date.26-02-2015

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[\[1\]](#) AIR 1967 SC 1274

[\[2\]](#) 1999 (3) SCC 0679

[\[3\]](#) 2006 (5) SCC 446

[\[4\]](#) AIR 1998 SC 300